MODERN BUSINESS CORPORATIONS

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MODERN BUSINESS CORPORATIONS

INCLUDING

THE ORGANIZATION *and* MANAGEMENT OF PRIVATE CORPORATIONS

WITH

FINANCIAL PRINCIPLES *and* PRACTICES

SUMMARIES OF DECISIONS OF THE COURTS ELUCIDATING THE LAW OF PRIVATE
BUSINESS CORPORATIONS, EXPLANATIONS OF THE ACTS OF PROMOTERS,
DIRECTORS, OFFICERS AND STOCKHOLDERS OF CORPORATIONS
AND FORMS OF PROCEDURE ILLUSTRATIVE OF THE
FORMATION, ORGANIZATION, OPERATION AND
CONSOLIDATION OF CORPORATIONS

BY WILLIAM ALLEN WOOD, LL. M.
Of the Indianapolis Bar

Second Edition

INDIANAPOLIS
THE BOBBS-MERRILL COMPANY
PUBLISHERS

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W8508 m
1917

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PREFACE TO THE SECOND EDITION.

The revised and enlarged edition of Modern Business Corporations has been made necessary because this unpretentious book has found a wide range of usefulness among lawyers, corporation stockholders, officers and managers, investors, accountants and among professors and students in the departments of economics or of commerce and finance in many of our universities. It has been used also in several universities in their engineering departments. It is gratifying to the author that he anticipated the needs of schools for a practical and simply constructed treatise on the organization, finance and conduct of business corporations and that the Wall Street Journal and other leading business publications immediately called attention to its value in these schools because of the fact that it simply gives information and is not controversial.

The author has found it desirable to add a discussion of the principles of taxation with particular reference to corporations, because this subject is very little understood by corporation officers and directors and because taxation under certain circumstances may play an important part in the success or failure of a corporation. In this discussion it has been the purpose, as in other departments of the book, to be of direct assistance to corporations. It is the wish here to give their managers a short review of the theories, economic and legal, under which taxes are imposed, and to furnish them a basis for judging the propriety of present laws and for estimating the justice of their contributions to the public funds. As the author believes corporations frequently are over-taxed as compared with other classes of property, he has offered a few suggestions for securing general relief and also has presented a few ideas which corporations may use in securing relief in specific instances of over-taxation. Knowing of no similar book which contains a discussion of taxation, the author ventures to hope his review will be found particularly useful. Since the tax laws of many states are being amended and rewritten, those interested in corporations will find here a summary of the subject that will give them a standpoint from which to view the justice of proposed new laws as those laws affect corporate property.

Several new forms have been added to this edition, particularly noteworthy being those pertaining to corporations organized under the New York law permitting capital stock without nominal or par value. As other states likely will adopt similar sensible laws, these forms relating to stock without par value soon will have a general practical interest. The department of purpose clauses has been expanded and there is a more adequate discussion of the principles of law under which these clauses are constructed.

Federal laws under which corporations are regulated and taxed have been added as a convenience to officers and managers of corporations, and specimen copies of partnership and joint stock association agreements and the trust agreements of unincorporated associations are included as illustrative of other forms of business association of interest to students.

July 1, 1917. WILLIAM ALLEN WOOD.

PREFACE TO THE FIRST EDITION.

The object in preparing this book has been to combine the essentials of the substantive law of corporations with the procedure in the organization and management of corporations so that the officer, director, and stockholder of corporations, and also the lawyer for corporations, may have a ready reference manual by which to gauge their actions. Much of the litigation in corporation lines arises out of ignorance or ignoring on the part of these persons of the essentials herein contained; also many of the failures of corporations arise from deflections from the principles of management and finance which are here introduced. The yearly economic waste from these sources is enormous. The principles of capitalization and finance have been given lengthy treatment because lawyers are rarely ever familiar with them and because these principles are not contained in any other book on this subject. The corporation lawyer of today should understand particularly well the principles of capitalization since, in most of the instances where he is called upon to incorporate companies, his advice is asked on this matter. It should be remembered that honesty and conformity to law in the organization and administration of corporations is the best policy even from the most selfish standpoint. The spirit of the following extract from the last report of the National Biscuit Company is commended to the officers and directors of corporations. After explaining that corporations are inevitable and desirable, and that our whole commercial character depends on the management of them, the writer of the report says: "Every officer of a corporation should endeavor so to manage its affairs that it shall commend itself to the people of the country so that the attitude of the people towards corporations shall be not hostile, but friendly. To accomplish this, the vital point, it seems to us, is that the corporation must not be separated from the individuals who manage its affairs, and that these individuals must carry into the management of the corporations the same rules of conduct that they apply to their private lives. They must not have one standard of morality as officers and another as private individuals. They must not only obey the law, but they must actively support the law."

Neither lawyers nor laymen having to do with corporations can have too extensive a knowledge of the well-established principles of corporation law. It would be impossible in a book this size to include the exceptions declared by positive rules of law in matters of detail; but a book of this kind furnishes a basis for all later and more extensive knowledge, and suggestions of caution are liberally sprinkled in places where they are most needed. The authorities used in the preparation of this book are many, but principally the following works have been consulted: Seymour D. Thompson on Corporations, Elliott on Private Corporations, Dill on New Jersey Corporations, Conyngton on Corporate Management and Meade on Trust Finance.

It has been the plan, as far as possible, to arrange the divisions of the subject as to their time sequence in the formation, organization and management of corporations, and to keep from chopping the subject into such small bits by sectional arrangement that its organic conception is destroyed. A book of this kind is necessarily an interweaving of law and business economics, as corporate business purposes are forwarded only through the union of corporate powers and corporate funds or assets.

William Allen Wood.

INTRODUCTORY.

Sohm, in The Institutes of Roman Law, says: "The conception of a collective juristic person as a possible subject of *private* rights was not developed till towards the close of the republic with the rise of the system of municipal government. The property of the municipium or town-community was brought under the private law, and the municipium thus acknowledged as a person capable of private rights and duties. * * * [The juristic person of Roman law] represents a kind of ideal private person, an independent subject capable of holding property, totally distinct from all previously existing persons, including its own members. It possesses, as such, rights and liabilities of its own. * * * In point of law, the collective person is a new individual like other individuals. * * * Roman law contrived to accomplish a veritable masterpiece of juristic ingenuity in discovering the notion of a collective person; in clearly grasping and distinguishing from its members the collective whole as the ideal unity of the members bound together by the corporate constitution; in raising the whole to the rank of a person (a juristic person, namely), and in securing it a place in private law as an independent subject of proprietary capacity standing on the same footing as other private persons. * * * A natural person, then, is a visible individual person, a human being; a juristic person, within the meaning of private law, is an ideal individual person with proprietary capacity, created by means of organization." So much for the origin of the corporations.*

In the time of the republic of Rome voluntary corporations were formed so extensively and so without restriction that they were all dissolved by a law passed 64 B. C. Later they were revived, and under Julius Cæsar it was required that the objects of incorporation should be clearly defined in the charter (articles), and that every charter should be submitted to Cæsar for approval. After the fall of Rome, and during the Middle Ages, the business corporations did not cut much figure. Church and workmen's guild corporations flourished. Later great trading corporations, such as the East Indian Company, the Hudson Bay Company, and many similar corporations were organized in England and other European countries. The English companies got to be monopolistic, and, in the end of Elizabeth's reign, two hundred shareholders controlled five-sixths of the foreign trade of England. These companies were created by special charter. England now has general incorporation laws.

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* Gaius traces corporate bodies to the time of Solon of Athens.

In America, during the colonial government, there were but six business corporations of strictly American origin and character. They were The New York Company "for settling a Fishery in these parts," created in 1675; The Free Society of Traders, in Pennsylvania, 1682; The New London Society United for Trade and Commerce in Connecticut, 1732; The Union Wharf Company in New Haven, 1760; The Philadelphia Contributionship for Insuring of Houses from Loss by Fire, 1768; The Proprietors of Boston Pier, or the Long Wharf, in the town of Boston in New England, 1772.* None of the charters for these associations was granted directly by the home government, however. The first business corporation having a charter granted through American sovereignty was the national bank proposed by Robert Morris for assisting the credit of the United States. The bank first existed as a private institution, but on May 26, 1781, after the ratification of the first Constitution of the United States, congress voted to grant it a charter. There was difficulty in placing the stock and it was not until Morris himself subscribed for the balance of some quarter of a million dollars that congress regarded the subscriptions as completed and finally incorporated "the president, directors and company of the Bank of North America," which had authority to increase its capital in the discretion of the directors to any amount not exceeding $10,000,000. Mr. Simeon Baldwin, in his paper, "American Business Corporations Before 1789,"** says, "The bank's notes were to be receivable for public dues, state and federal, and congress recommended to each state the enactment of a law that no other bank or bankers should be established or permitted to do business within its limits during the continuance of the war. It proved a profitable as well as patriotic enterprise. Almost immediately it began to make dividends of 13 and 14 per cent. a year, and under an ancillary charter obtained from Pennsylvania in 1787, it still exists, with a capital of $1,000,000 and a surplus of nearly twice that sum." In both England and America down to the early part of the nineteenth century, sentiment was against corporations formed for private profit. This sentiment existed till the privileges of incorporation were offered on equal terms to all by general laws. Before then corporations had been largely exclusive and monopolistic and the people were afraid of them. The early corporations were not considered desirable by business promoters unless they were given exclusive and special privileges. In New York the influence of Hamilton and Livingston against public jealousy of corporations availed nothing. Until 1795, only religious, charitable or literary corporations could be formed under general laws. It was left for North Carolina, in 1795, "for the first time since the beginning of the Roman Empire," as a sovereign state to institute one of our fundamental political institutions by offering incorporation for business purposes on equal terms to any and all who desired it. Though this state confined its privilege to a single class of business, the construction and operation of canals, it gave a generous franchise, including the right of eminent domain. It provided, however, that the properties should become public

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*Report of American Historical Association, Vol. 1, 1902. See same source and references therein for other facts herein contained.

**Quoted from Baldwin's "American Business Corporations Before 1789," in Report of American Historical Association for 1902, which quotes from Two Centuries' Growth of American Law, Yale Bicentennial Publications, 296-311.

when the shareholders should have received their capital with interest at 6 per cent. Since then, in all states, the privileges of incorporation have been extended by general laws to all businesses and in many of the states the creation of corporations by special acts has been forbidden. While businesses have been restricted and are in most states still restricted as to the variety of acts they can perform and the number of purposes they may have, a more liberal code has developed, and is in use in several states, by which, in the absence of fraud in organization and management, a business corporation may do practically anything an individual may do.

The corporation is merely a form of conducting business under the law. It is distinguished in this line from the individual in business on his own responsibility and for his own profit, known in economics as the individual entrepreneur, or undertaker, and in common language as the private business man, and from the partnership, the joint stock association and the more recently developed unincorporated association. The external incidents of the various forms of business conduct are more legal than economic in their conception, but the forms are chosen under different personal and economic circumstances with respect to their availability in apportioning the elements of risk, control and income.† The most convenient and adaptable form, particularly in respect to the needs of large businesses, is the corporation, with its many kinds of stocks, bonds and other securities; hence its popularity as a business form in the development of modern industry and commerce.

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†For an excellent discussion of the corporation from this standpoint, see Chapter I in Capitalization, a book on Corporation Finance, by W. H. Lyon.

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PART I.

PRIVATE CORPORATIONS: DEFINITION, ADVANTAGES, LEGAL STATUS.

MODERN BUSINESS CORPORATIONS.

PRIVATE CORPORATIONS: DEFINITION, ADVANTAGES. LEGAL STATUS.

§ 1. Corporation: Definition.
2. Kinds of Private Corporations.
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4. Incorporation in More than One State.
5. Special Acts of Incorporation.
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7. Advantages of Incorporation.
8. Two Theories of the Duty of a State in Creating a Corporation.

§ 1. CORPORATION: DEFINITION.

According to contemporary practices, a corporation is an association of natural persons, or of other legally constituted persons (other corporations), authorized by law to act as a unit, under a corporate name, for the accomplishment of certain definite and prescribed purposes. It is a "person" constituted by law, separate and distinct from its stockholders, and, in a certain sense, is a citizen. Actions at law may be maintained against it the same as against a natural person. "Company" is the word commonly used in speaking of a corporation, though it is wider in its definition and may refer to a partnership, or a firm, or to a joint stock association, as well as to a corporation. A corporation has its origin in an agreement between individuals, but incorporation becomes effective only through the operation of a special charter or a general enabling act, whose provisions are accepted by the execution of the agreement, called the articles of association.

§ 2. KINDS OF PRIVATE CORPORATIONS.

Private corporations are classified (1) "for profit," or (2) "not for profit." The first are for money-making purposes and include commercial, or business, or industrial corporations, such as manufacturing, refining, mercantile corporations; and financial, or moneyed corporations, such as banks, trust companies, and insurance companies; and transportation corporations, such as railroads, steamship, telegraph, and telephone companies; and development corporations, such as mining, oil and stone quarry companies. Corporations "not for profit" include benevolent and religious associations, certain colleges and schools, clubhouses, and the like. Quasi-public or franchise corporations are those which operate under franchises that usually relieve them, in some measure, from competition, and which the general public desires to patronize so far as convenient or necessary. These are public utility corporations, such as railroad, street car, telegraph, telephone, electric light, gas and heating companies.

§ 3. BY WHAT LAWS A PRIVATE CORPORATION IS GOVERNED.

All the states have general enabling acts relative to corporations. A business corporation usually has all the powers granted it by the state under whose laws it was organized, and it is governed primarily by the laws of that state. It does business in other states by sufferance, but no matter what are the corporation laws of other states in which it may do business, it is not usual, so far as charter rights are concerned, that restrictions are imposed upon it other than the restrictions imposed by its parent state. As it is impossible for a parent state to give extraterritorial force to its laws, however, so far as a company does business in another state than that in which it is organized, that state has the power to impose on the capital or interest represented in its territory the same restrictions that apply to corporations organized under its own laws. Insurance companies and banks, building and loan associations, and other financial companies, and steam railway corporations are more frequently regulated by the individual states in which they do business than are other kinds of corporations. Citizens of a state whose laws stringently regulate the organization of corporations under its authority may organize under the laws of a state which gives liberal privileges to corporations and may then usually do business in the state of their residence with all the privileges their charter grants.

It has not been determined that congress possesses, under the constitutional right to regulate interstate commerce, the power to charter corporations which do an interstate business. It makes a practice of chartering national banks and certain other corporations under the authority of the constitution to maintain the national physical existence. But it is as a means of executing powers of the national government, and not as an end, that congress creates a corporation. Professor Wilgus, of the University of Michigan, argues very well in a monograph entitled A National Incorporation Law, that congress has the power to create corporations which are engaged in interstate business.

§ 4. INCORPORATION IN MORE THAN ONE STATE.

Sometimes a company, or what is to all intents and purposes one company, is incorporated under the laws of several states. This happens in the case of railways that have interstate lines. The charters are the same, or similar, in the several states, and all the lines are managed by one governing body. Under former rulings it was held that the several corporations maintain a separate and individual identity. Judge Seymour D. Thompson says in his work on corporations: "This casuistry was not suited to the practical needs of a business people; and consequently the court which first propounded it was compelled to abandon the doctrine. * * * Accordingly the doctrine of the court now is that several states may, by competent legislation, unite in creating the same corporation or in combining several pre-existing corporations into a single one; that one state may make a corporation of another state, as thus organized and conducted, a corporation of its own as to any property within its territorial jurisdiction; and that a state may by an enabling act authorize a corporation created in another state to build and use a railroad within its own limitations without creating a new corporation." Ordinary private business corporations are not concerned in the ability of a corporation to be the creature of more than one state.

§ 5. SPECIAL ACTS OF INCORPORATION.

The creation of corporations by special legislation is now generally prohibited by the state constitutions, but a few years ago all corporations were so created. The territories are prohibited by federal statute from granting private charters. In some instances where special charters are prohibited by statute, the prohibitory legislation applies only to certain kinds of corporations. Current legislation tends to limit the field in which private corporations may be created by special act. It would be an extraordinary private business corporation that could not be organized satisfactorily under the existing laws of one of our commonwealths.

§ 6. DIFFERENCE BETWEEN A PRIVATE CORPORATION AND A JOINT STOCK COMPANY.

A joint stock company is a partnership, composed of numerous partners, which has the following features in common with a corporation: (1) Continuousness, so that any member may transfer his shares (with or without the consent of the other members), and thus introduce a new partner without dissolving the previous business body. (2) A board of directors or trustees controls the body, and no member of the company has agency to act for the company as whole. It differs from a corporation in that the members of the joint stock company are liable for the debts of the company jointly and severally as in a partnership, whereas the members of a corporation are not liable for the debts of their organization, except when made so by statute, or when special qualifications have been made rendering them liable. And it also differs in that a joint stock company sues and defends in the name of an officer empowered to sue and defend, while a corporation sues and defends under its corporate name. A joint stock company may exist without express authority from a state, as it is created by contract. In many states, however, such companies are provided for by statute. The joint stock company is an infrequent form of American business association.

§ 7. ADVANTAGES OF INCORPORATION.

The first advantage of incorporation is that of continuous succession, or indefinite duration. Unless it becomes insolvent, or voluntarily dissolves, or the term of its existence, fixed by law, expires, the corporation remains a business "person." Any fortuitous vicissitudes, such as a disagreement of stockholders, insolvency of stockholders, death of a stockholder or disability in any other direction, does not affect the life of the corporate body. This intact condition is rendered possible in ordinary business corporations through the shares of stock which represent each shareholder's interest in the business, and which may be transferred indefinitely without the act of transference, *per se,* affecting the corporation in the least. A second advantage is that, in providing the funds for establishing and running a business, the capitalization may be divided almost indefinitely, so that people of small means as well as those of large may contribute their share of funds and receive their share of dividends on their contribution. The stock of a corporation may have a par value of $1, $50, or $100 per share, the most common amounts, or any other amount the incorporators may elect, if minimum and maximum or other amounts are not prescribed by state law.* In financial, mercantile, manufacturing and transportation corporations the par value is usually $100, while in mining and oil companies the par value is often $1 per share. Small investors frequently speculate in development companies to the extent of $25 or $50, whereas if they were compelled to pay $100 per share they could not join in the company. In mining ventures it is frequently the case that half the stock is taken in small subscriptions. Another advantage of incorporation is that the stock representing the holder's share may be used as collateral security for borrowed money. A partner* can not use his interest in a business as security for a loan in the way of a pledge. Where there is actual value behind it, stock is also more readily marketable than a partnership interest and may be transferred by the simple method of indorsement. When an individual or firm wants to sell a large and established business which produces a fair and uniform income, the easiest way to do this is by incorporating the business. The larger a business is the more difficult it is to find buyers. By incorporating, interests in the business may be sold to many buyers and probably a larger price can be realized than if the business had been sold to a single buyer or to two or more partners. When an individual requires money for his business, by incorporating and selling stock he avoids the dangers that come from admitting partners. The limited liability feature of a corporation is one of its chiefest advantages. A subscriber to stock in a commercial corporation is liable only to the par value of the stock purchased. If it is issued "full paid" in *bona fide* payment for property or services, he is not liable unless fraud is provable in the matter of the valuation of the property or services. In banks, trust companies, and other financial institutions a double liability is usually imposed, making the stockholder liable in the amount of his total holdings as expressed by the par value of a share multiplied by the number of shares held, and to the amount of the par value of his holdings in addition. Thus the subscriber to stock always knows how much he is risking in taking it, and no one who buys his stock is liable for more than the original holder. But in a partnership the partners are jointly and severally liable to the extent of all their possessions for the debts of the firm, less the amount of the legal exemption for debts, and for all other liabilities. For instance, if a partner, even through haste or mistake, makes an oral agreement or signs a contract, if an employe commits an error or is injured, or a man outside of the business suffers damages by carelessness on the part of the firm in protecting the public from the machinery or the apparatus of its business, or from carelessness of an employe, all a partner's means stands as security for a judgment against the firm guilty of such inadvertence or whose agent or employe is guilty. The vicissitudes which may overtake a partnership are many. A partner may withdraw his interest in a business, crippling or ruining the business. He may be sick, become insane, or die, causing a dissolution without the consent of the other partners. If private creditors seize a partner's interest, the firm is dissolved. If a partner dies, his administrator or executor may withdraw that partner's share. His estate then usually receives only the value of his portion of the tangible assets, without the added value of good will or earning capacity. On account of large earning capacity, stock in a corporation may be worth twice its par value. An administrator sells the stock for the market price, and could not, if he would, considering the business to be well managed and solvent, withdraw from the business the interests represented by the stock. Moreover, one partner cannot sell his interest without the consent of the other partners in the business, nor can he take his children into the business, or, indeed, permit them to become apprentices, without the consent of the other partners. The prestige and good will of an unincorporated company may attach to one of the firm, while they are more likely to be identified with the company in case of incorporation. And by no means the least advantage, the corporate form of business administration offers a uniform, orderly, well-defined and systematic plan of procedure, a mechanism for the conduct of business, which, when properly used, is as superior to the partnership form as is a modern locomotive to a locomotive of fifty years ago. So, when large interests are at stake, the corporate form of association is safer and more satisfactory.

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*For description of shares without par value see note to form under New York law for such shares.

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*A partnership is a voluntary contractual relation or status between two or more competent persons to combine their money, property, labor, skill, all, any or either, in a lawful business or enterprise for the purpose of joint benefit or profit and with a willingness to share losses jointly. It is, in effect, a contract or status of mutual agency, each partner acting as a principal in his own behalf and as agent for the others whereby he may handle the partnership property as if it were his own and may bind all the partners by his single acts and contracts.

§ 8. TWO THEORIES OF THE DUTY OF A STATE IN CREATING A CORPORATION.

In a report which a committee on corporations made to the legislature of Massachusetts in 1903 there were set forth two general theories, as revealed by the state laws bearing on corporations, as to a state's duties in creating corporations. The first is the old theory that, being creatures of the state, corporations should be guaranteed by it to the public in particulars of responsibility and management; the second is the opposite modern theory that in the absence of fraud in a corporation's creation or government, the common business corporation should be permitted to do anything that an individual may do. Under the former theory, the capital stock of the corporation was, in the law, considered a guaranty fund for the payment of creditors as well as a means of conveniently measuring the interest of the individual owners of the corporation. There resulted from this theory the principle that the capital stock, being in the nature of a guaranty fund, shall be paid for at its par value in actual cash, and other provisions protective of creditors, such as those wherein is provided that the debts of a corporation shall not exceed its capital stock, a provision designed in the interests both of creditors and stockholders, who are looked after as carefully as if, when connected with corporation matters, they were wards of the state. Other provisions of laws enacted under this theory limit the par value of shares, make stockholders liable in excess of their actual or contracted investment, and impose on directors liability for debts of the corporation which may arise out of the ordinary chances of business. The results of this system are that technical and sometimes dishonest means are created for avoiding the laws, and capital organizes itself under the more liberal states, states wherein frequently not any of the capital is represented or the business transacted. The states having these laws have failed in their attempts to give the intended security to creditors and stockholders, and the decisions of the courts under these laws are confused. Under the modern theory, the state owes no duty to persons who deal with corporations to look after the solvency of corporate business enterprises, nor to the stockholders to protect them from the consequences of going into such concerns, the idea being that in the case of ordinary business corporations, the state's duty ends in providing clearly that creditors and stockholders shall be able at all times to secure the precise facts concerning the organization and management of such corporations, and especially that full publicity shall be given to all the details of the original organization. Charles A. Conant says in his book entitled Wall Street and the Country: "It is a question whether the protection of the investor in the future should not proceed along the lines of his economic education rather than along the lines of new restrictions upon corporations. Just so far as the government relieves the citizen of the obligation of looking out for himself, it promotes a condition of dependence upon the state which is detrimental to genuine economic progress." In the last decade many radical changes have taken place in the industrial and economic conditions of the United States. The aggregating tendency of capital has resulted in the organization of thousands of corporations. Some of the states have recognized the necessity of providing for the fullest development of the legal entity of the business corporation and have enacted laws which concede the rights and privileges of that entity. New Jersey, Delaware, Maine, and South Dakota adopted liberalized corporation laws, and were followed by New York, Massachusetts, the District of Columbia, Connecticut, West Virginia, Nevada, Arizona, Virginia, New Mexico, and Washington.

PART II.

THE FORMATION AND ORGANIZATION OF A PRIVATE CORPORATION.

THE FORMATION AND ORGANIZATION OF A PRIVATE CORPORATION.

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THE FORMATION OF A PRIVATE CORPORATION.

§ 9. Who May Form a Private Corporation.

Three or more natural persons (the expression "natural persons" means men or women, in contradistinction to "artificial persons," such as corporations) of legal age may come together for the formation of a corporation. Sometimes one or more of the number must have citizenship in the state under whose laws the corporation organizes. Married women may be corporators if the statutes of the state in which the corporation is organized have removed the common law disabilities of married women. Any natural person capable of contracting may be a corporator. Partnerships, corporations, minors, persons mentally incompetent, may not be original subscribers to stock, though, by transference, they may come into possession of stock and may hold it. The personality, previous business success, and reputation for integrity of the corporators often have much to do with the sale of stock after a company has been incorporated, so that a promoter should usually look beyond the mere ability of a person to furnish money for his enterprise.

§ 10. Fortuitous Association of Individuals.

It may be desirable that a partnership concern be changed into a corporation, in which case the partners alone, or with friends or other investors, become the corporators; or a person may have a plan for business which he communicates to his friends, or to any persons having sufficient means to take stock, who may agree to join him in the formation of a corporation. Bankers and capitalists have frequent opportunity to know of desirable manufacturing businesses, or transportation or development schemes, and, when satisfied of the comparative safety and of the reasonable prospects for good returns, choose a few of their friends and acquaintances and offer them the opportunity to put in money to furnish the funds necessary to start the company. Usually the banker or capitalist does not make any commission or profit because of his little work in getting the necessary capital in addition to what he puts in. He does not go far out of his way to get the additional money. The association of himself and the other incorporators is largely fortuitous. He knows several people with money to invest, and he sets before them the plans of the company. They invest or do not invest as they choose, without having been especially sought out and having had applied to them the particular and enthusiastic persuasion that the professional former of corporations would use.

Formation by Promoters.

§ 11. *Definition of "Promoter," and the Promoter's Functions.* The word "promoter" has not yet a legal definition, but is a business term familiar in corporate finance. A promoter, in business practice, is one who seeks fields for investment in new enterprises or in the extension or diversification of established industries, and, for a consideration, forms and organizes a corporation to develop the particular field he has chosen. The promoter commonly attends to everything connected with the floating of an enterprise. In the first place he finds an enterprise with prospects of good returns on the money to be invested; he employs technical experts in the line of industry to prepare the figures of cost and prospective returns, so he and those to be interested with him may know as exactly as may be what they have and what they may expect; he prepares a prospectus based on the expert's figures; he secures legislation, where that is necessary; he secures options and leases, where they must be secured. In short, he "assembles" the proposition. Then he employs a corporation lawyer to prepare the articles of incorporation, and secures the necessary subscribers to the articles, sees that the articles are recorded and filed, that the certificate of incorporation is issued, and pays the incorporation costs; he sells the stock of the company directly to the public, or to bankers or other underwriters whom he has usually provided for before organizing the corporation, and ordinarily he takes his own profit out in stock. His relation to the corporation is fiduciary.

§ 12. *Promoters' Profits.* The promoter has to create value to entitle him to profit. He provides a new or original means of making money, and makes the means productive through the development of a "going" concern for the utilization of that means. His profit, though large, is legitimate profit. It is arrived at usually as follows. From the figures of the technical expert on the proposition, the promoter arrives at a conclusion as to the total net profits of the business when it has been developed. If he is a conservative man, he capitalizes his business on the basis of its average earning capacity with only enough "water" to provide for increased earnings. If the proposition was one worth his efforts, it was a proposition which could be capitalized at a figure greatly in excess of what he paid for it in its undeveloped condition, and also in excess of this cost price and the development cost combined. The difference between these costs and the sum which he receives for the stock represents his profit. If options have been paid for before the property has been bought, their cost usually comes out of the promoter's profit. As a rule, the earning capacity of his proposition is such that the promoter can capitalize so as to provide sufficient working capital and sell the common stock at from fifty to seventy-five cents on the dollar, which is desirable to facilitate the sale, and still have for himself a margin of profit of from fifteen to thirty per cent. of the capital stock. He is perhaps offering stock that will some time net the investor six to twenty per cent. The promoter is equipped for his work by his resourcefulness in finding new and worthy enterprises, and ability to harmonize interests and handle men, by his financial connections, and his business experience generally. To combine the original resources for wealth and the money to develop them, he works according to system, going out to find the resources, perhaps, and making definite and extensive effort to secure the funds for operation. The association of individuals in the promoter's corporation is not fortuitous, but is the result of the work of a trained business agent, the promoter, who is working for his own profit, and is earning his profit by assembling the business proposition and by securing the incorporators and other investors.

§ 13. *Fiduciary Relation of Promoter to Prospective Corporation.* Before the organization of a corporation the promoter of that corporation is regarded as a trustee for those who shall be entitled to act for it, and can be held to this fiduciary relation until the corporation has been in existence and engaged in business for a year, when responsibility for the relation ceases. Hence, when the corporation comes into existence the promoter must make a full and fair disclosure of all his acts as promoter, and he must include a disclosure in full of what he is to receive as compensation for bringing the company into existence.

§ 14. *Responsibility of Fiduciary Relation and Recovery for Breach.* The corporation which the promoter organizes is an artificial child of the promoter which is of age at birth. To give this child an independent being, the promoter is bound to give his corporation a board of directors which, in its dealings with him, will act for the corporation in its capacity of a separate and independent being whose interests may or may not be the interests of the promoter.* The promoter is bound in law not to take any secret or unfair advantage of the child. Hence he must make to the board of directors or to the stockholders or other governors, when his corporation is organized, a full and fair disclosure of his transactions previously performed for the corporation and his interest in each of them, much as the guardian of a child makes to the court when the child becomes of age. Money or property this father had received before the birth of the child he must account for, as having been held in trust by him.

It has been held that a statement in a prospectus of the promoter's interest in the transactions is a sufficient disclosure. All facts necessary to determine the desirability of a property for purchase constitute a full and fair disclosure. Methods of violating the fiduciary relation include the purchase of property at one price and the sale of that property to the corporation at a higher price, the receiving by the promoter of a bonus or commission from a vendor for negotiating the sale of the vendor's property to the corporation, secretly retaining the difference in prices, or the bonus or commission. These are the most common violations of the fiduciary relation. The profits in such cases are held to belong to the corporation and can be recovered by suit against the promoter. When, however, the promoter of the corporation which takes the property was owner of the property before the fiduciary relation began, what he paid for it is, in the absence of fraudulent representations and provided the stock subscribers had opportunity to examine the property, not a matter for disclosure, since, in buying the property, he acted for himself. And, if a promoter, having an option on property, sells to his corporation at a profit, where, in the subscription papers or in other form of notice he says he has an option and will sell the property to the corporation for a certain price, and no representations were made as to the price he paid for the property, he does not have to account for the profits.

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* If, however, the truth has already been disclosed to those who join with the promoter in the organization of the company, there is authority (Lagunas Nitrate Co. v. Lagunas Syndicate, L. J. Ch. 699, L. T. Rep. N. S. 334) for a modification of this principle to the effect that duty is not incumbent on the promoter to provide his corporation with an independent board of directors.

§ 15. *Promoter's Fraudulent Representations or Concealment and Liability Therefor.* A promoter is not liable for representations made in good faith with an actual and honest belief in their truth unless he agrees to guarantee his representations. But if he makes unqualified assertions without knowing whether or not they are true, he is liable. If he fraudulently misrepresents or negatively conceals facts which it is his duty to disclose, one who suffers loss may recover from him. If subscriptions to stock are obtained by misrepresenting or concealing facts, subscribers may recover damages. If the misrepresentation is by way of a prospectus, damages may be recovered the same as if the misrepresentations were made by word of mouth. In English law, after shares of stock have been transferred from the original purchaser, damages cannot be recovered by the second purchaser for misrepresentations in a prospectus unless the second purchaser saw the prospectus before he purchased the shares. American decisions hold that it is not necessary that misrepresentations should have been communicated directly to the person who was induced thereby to purchase shares; it is sufficient that the misrepresentations deceived any person who came to know of them. A promoter is likewise liable for negative concealments which have the same effect as misrepresentations. When a promoter conceals from a corporation that he is interested in a sale of property, and is the actual vendor of the property to the corporation, and realizes a profit from the sale, the corporation may have the sale rescinded and may recover the money paid for the property. It has been held that where a promoter is held to account for secret profits he is entitled to a set-off to the amount of expenses he has incurred in good faith in promoting the corporation,—for advertising, brokers, options, etc., but not for any sums he has dispensed fraudulently.

§ 16. *Failure of Organization of the Corporation and Promoter's Liability.* If a promoter fails in his attempt to organize a corporation he is liable to subscribers for stock for any sum of money received from them, unless he has used the money in forwarding the project with the knowledge and consent of the subscribers. If the subscribers have agreed with a promoter that they will share losses with him if the project fails, they cannot recover in full. If subscribers agree to the application the promoter makes of their money, they have no recourse, unless the project was a swindle and they did not have knowledge of this fact until after they had acquiesced in the application of the money.

§ 17. *Corporation's Liability for Services Rendered by Promoter.* It is a rule with many apparent exceptions that a corporation is not liable for a promoter's services or expenses incurred by him in bringing the corporation into existence unless the corporation's charter or a statute so provides. A promoter is reasonably safe, however, in rendering services and expending deposits received from stock subscriptions, for decisions practically establish the principle that services or expenses which are necessary to the existence of a corporation and the benefits of which it must accept if it exists at all, must be paid for by the corporation. The logic of these decisions is not clear-cut and the contact of the decisions with established legal principles is faulty. In order that the corporation be bound for such services and expenses, it has been held that they must have been necessary, reasonable, and for the benefit of the future corporation, and must have been performed or incurred under a contract with the promoter and with the expectation that they be paid for or paid by the corporation itself, and not by the individual corporators. When all the corporators request services to be rendered, and no other persons are added to the list of corporators or stockholders thereafter, it has been held that the corporation is liable for the value of the services. Where other persons join the corporators after the request, whether they join as corporators or stockholders, the corporation is not liable.

§ 18. *Promoter's Lack of Agency.* A promoter is not agent for a corporation to be organized, because the principal is not in existence. He cannot affect the embryo corporation by his representations or assertions or by contracts made for it. But he practically becomes agent by adoption when, after the corporation comes into existence, it adopts contracts or agreements made in its behalf or accepts the benefits of such contracts or agreements, having knowledge of them and having had opportunity to decline them. Legally speaking, he does not, however, become agent in fact, for, in order to adopt the engagements made by the promoter in a manner other than accepting their benefits, such corporate action is necessary as when the corporation makes a contract in its own behalf. That is, the corporation enters into a new contract through its officers or governing body. It has also been held that an engagement made by a promoter which would not, in an organized company, necessarily be made by formal action of directors or trustees, but might be made by the president or manager, may be adopted without the formality of concurrence by the directors or trustees.

§ 19. *Contracts Made With Promoter.* So far as the future corporation is concerned, contracts or engagements made with a promoter have been held to amount only to a proposition for a contract with the corporation to be organized. So that when a subscription to capital stock has been given a promoter before the corporation is organized and there was an acceptance, and the corporation later comes into existence and accepts the subscription by issuing the subscriber's certificate, offering him an opportunity to vote his stock, or otherwise recognizing him as a subscriber, the subscriber is bound for payment. It has already been seen that a corporation may adopt a promoter's contracts and therefore become liable for them. But a promoter is himself liable for engagements contracted in the name of his corporation until it comes into actual existence and until it adopts them either impliedly by accepting the benefits under them, or by action of an officer or of the governing body. In case the corporation is not formed, the promoter is personally liable for all contracts he has made, and, if there are several promoters, each is liable for contracts he has made or in whose making he has concurred. If, however, a creditor waives his right against a promoter and agrees to look to the corporation to pay when it shall be formed, the promoter is not liable. When it has been arranged that the creditor shall look only to the promoter for pay, the corporation cannot be held liable on the contract. A partnership arrangement may be made among promoters, when each is liable and all are liable as are partners. In general, a corporation may affirm and enforce its promoter's contracts for its own benefit.

§ 20. *The Inter-Relation of Promoters.* The relations that promoters assume among themselves is a matter of discretion. According to the manner of their association together they will be governed by the law as it applies to individuals or to partnerships, and it is a matter for the promoters to determine which they prefer. Care should be taken by an unexperienced person who undertakes the rôle of promoter that he does not assume any liabilities he does not care to assume through lack of knowledge of what may constitute a partnership agreement.

§ 21. *Aiders and Abettors of a Fraudulent Promoter.* Any one who assists a fraudulent promoter or shares in the proceeds of his fraudulent scheme is liable with the promoter.

§ 22. Where to Incorporate.

The corporation laws of the various states are constantly changing, so that it is necessary, in any large or intricate business, to present the question of where to incorporate to a competent corporation lawyer. If the business is small and simple it is usual to procure a charter from the state wherein the business operates and the incorporators live, unless the laws of that state are antagonistic to the purposes of the incorporators. Businesses which are large, with large capital and intricate corporate purposes, usually incorporate under one of the states or territories whose laws are liberalized. Several of the commonwealths may present to a prospective corporation similar advantages in laws, or one may offer some special advantage which it is desirable a particular company should have. In investigating the business corporation acts of a commonwealth under which a company may wish to incorporate, some of the things one may take note of are the policy of the commonwealth toward domestic and foreign corporations; the statutory length of life of corporations; legislative control over private corporations; the corporate purposes permitted in reference to those desired; amount of capitalization and the par value of the stock permitted; the amount of stock required to be subscribed and paid before beginning business; power to issue preferred stock; time within which capital stock must be paid up; assessability of stock; power to create debts; number, residence and qualifications of directors; whether all incorporators may be non-resident; whether stockholders' and directors' meetings must be held in the commonwealth where a charter is procured; whether the principal office may be maintained outside of the commonwealth where the company may be organized; whether the corporation is allowed to hold stock in other corporations; whether stock may be issued legally in exchange for property or services instead of for cash; whether the appraised value by the board of directors of property or services paid for by issuance of stock is conclusive upon the creditors of the corporation who seek, in case of insolvency, to enforce an alleged liability for unpaid stock; ease or difficulty with which the charter may be amended; publicity required as to the condition of a corporation organized under the laws of that state; extent of stockholders' and of directors' liability; whether there is an inheritance tax on stock, and whether imposed on residents or non-residents; ease or difficulty with which the corporation may be dissolved; whether a voting trust may be created; the amount of annual franchise tax, if any, and other taxes; initial expense. It is well, also, at the same time to investigate the laws of all states in which the company expects to do business with reference to the terms and conditions under which foreign corporations may do business in them. Further, it is sometimes important to incorporate in a state where the particular points of advantage of which the incorporating company is availing itself have come up in litigation and have been judicially sustained. Adjudicated laws have more permanence than those whose status has not been determined. The tables of incorporation fees, taxes, etc., in the appendix are self-explanatory and useful.

§ 23. *Special Advantages and Disadvantages in the Corporation Laws of the Liberal Commonwealths.* Arizona. Advantages: stock may be issued for money, property, or services; directors' meetings may be held outside of territory; low organization fees; stockholders may vote cumulatively. Disadvantages: the first stockholders' meeting must be held in the state, but a provision may be made in the by-laws whereby all succeeding stockholders' meetings may be held outside the state; laws not thoroughly adjudicated.

Connecticut. Advantages: stock may be paid for in cash or property, and judgment of directors is final as to value of property, in absence of fraud; incorporators may be non-resident; no annual franchise tax; corporations may hold stock in other corporations. Disadvantages: stockholders' meetings must be held in the state; no statutory provision for permitting directors to hold meetings outside of state; inheritance tax on stock.

Delaware. Advantages: organization fees are low; stockholders' and directors' meetings may be held outside the state, if provision is made in the by-laws; stock may be issued for services rendered, as well as for cash and property; incorporators may be non-resident; corporations may hold stock in other corporations; bondholders may be permitted to vote. Disadvantages: one director must live in Delaware; collateral inheritance tax on stock, which applies to residents and non-residents; annual franchise tax.

District of Columbia. Advantages: very small cost of incorporating; no franchise or inheritance tax. Disadvantages: majority of trustees (correspond to directors) must live in the District; can not issue stock for services; ten per cent. of capital stock must be paid in before beginning business; annual reports must be filed and published, and shall include amount of capital paid in and amount of existing debts; corporations can not buy stock in other corporations; corporations organized under this law can not sue except as to constitutional rights, patents, etc., in the federal courts, not being citizens of any state;* laws unadjudicated.

Maine. Advantages: stock may be issued for services, property, or cash, and judgment of directors is conclusive as to value in absence of fraud; incorporators and directors may be non-resident; directors' meetings may be held outside of state; corporations may acquire stock in other corporations; low organization fee. Disadvantages: stockholders' meetings must be held in the state; collateral inheritance tax; small existence franchise tax.

Massachusetts. Advantages: incorporators and directors may be non-resident; directors may meet outside of state; stock may be issued for services, property or cash. Disadvantages: stockholders' meetings must be held in the state; no authority to corporations to hold stock in other corporations; detailed annual report required; collateral inheritance tax.

Nevada. Advantages: incorporators and directors may be non-resident; stockholders' and directors' meetings may be held outside of the state; stock may be issued for property, services, or cash, and judgment of directors as to value is conclusive in absence of fraud; no inheritance tax; action of majority of stockholders or directors may be valid without regular meeting; bondholders may be given the right to vote; cumulative voting allowed; no annual franchise tax (except retaliatory tax); low organization fees. Disadvantages: no particularly undesirable provisions.

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*Hooe v. Jamieson, 166 U. S. 395, 41 L. ed. 1049; Marks v. Marks, 75 Fed. 321.

New Jersey. Advantages: incorporators may be non-resident; stock may be issued for property or cash, and judgment of directors is conclusive in absence of fraud; directors' meetings may be held outside of the state, if by-laws so provide; corporations may hold stock in other non-competitive corporations; cumulative voting permitted; voting trust may be created; laws well adjudicated. Disadvantages: stockholders' meetings must be held in the state; one director must live in the state; annual franchise tax; collateral inheritance tax (does not apply to nonresidents).

New York. Advantages: stock may be issued for labor, property, or cash, and judgment of directors is conclusive, etc.; directors' meetings may be held outside of state; corporations may hold stock in other corporations; shares without designated par value may be issued; cumulative voting permitted; voting trust may be created; laws well adjudicated. Disadvantages: stockholders' meetings must be held in the state; one incorporator and one director must reside in the state; one-half of the capital stock must be paid in within a year from incorporation; exacting reports, on request; detailed books of account of business required; direct and cumulative inheritance tax; there may be disadvantages in the income franchise tax in specific instances.

South Dakota. Advantages: stockholders' and directors' meetings may be held outside of the state; stock may be issued for cash, services, or property; no annual existence franchise tax; cumulative voting permitted; low incorporation fees. Disadvantages: one of the incorporators must reside in the state; corporations have no authority to hold stock in other corporations; detailed record of business transactions and reports of meetings of stockholders and directors, embracing all acts done and ordered to be done, must be kept in corporation office, and be open to inspection of creditors; published annual reports of indebtedness due to and by the corporation, number and amount of dividends paid, and net amount of profits; life of corporation but twenty-five years.

Virginia. Advantages: incorporators and directors may be non-resident; stock may be issued for cash, services, or property, and judgment of directors is conclusive, etc.; directors' meetings may be held outside of the state; corporations may hold stock in other corporations; cumulative voting allowed; bondholders may be given right to vote; no books required in state. Disadvantages: annual meetings of stockholders must be held in the state; collateral inheritance tax on stock.

West Virginia. Advantages: stockholders' and directors' meetings may be held outside of the state; incorporators and directors may be non-resident; stock may be issued for services, property, or cash, and judgment of directors is conclusive, etc.; corporations may hold stock in other corporations; no books required to be kept in the state; cumulative voting allowed; action of majority of directors may be valid without calling a regular meeting of the board. Disadvantages: ten per cent. of the amount subscribed by each incorporator must be paid in before charter can be issued; collateral inheritance tax on stock.

New Mexico. Advantages: directors may meet outside of territory; no stockholders' liability for unpaid stock, provided a certificate to that effect is filed with articles and the fact is published as provided—except as to the stock with which the corporation commences business; directors may make assessments on shares till par value shall have been paid; cumulative voting for directors is permitted; corporations may hold stocks and bonds of other corporations; stock may be issued for property purchased, and certain corporations may take stock and bonds in other corporations in payment for labor and materials; any corporation which shall have more than one kind of stock may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class (with respect to the time for which they shall serve) upon the stockholders of any class or classes, to the exclusion of the others; no inheritance tax; no annual franchise tax. Disadvantages: no authority for stockholders' meetings outside the state; one director in New Mexico required; stock and transfer books required to be kept in territory; minimum stock, $3,000, of which $2,000 must be paid in before commencing business; stockholders' meetings required to be held in registered office in the territory—but may be held by agent through proxies. This act (approved March 15, 1905), was copied in general from the New Jersey Laws.

Porto Rico, also, has a liberal incorporation law based on the New Jersey Code.

§ 24. Relation to the Creating State of a Corporation Whose Principal Office and Business are Located in a Foreign State.

The legal side of this subject has already been touched upon. A corporation is governed by the laws of the state which creates it, but is subject to the legal restrictions of the states where it does business. In order that the parent state may continue to exercise jurisdiction over its corporations, they are usually obliged to maintain in that state an office where, and a resident agent upon whom, process may be served. Where a resident director is necessary under the law, process may be served on him. In some of the states where there are such requirements as these, certain persons make a business of acting as resident agent or director for domestic corporations whose principal business office and manufacturing or other kind of plant or business is located in a foreign state. Certain "trust companies," organized for this particular service, furnish their place of business as the resident office of such corporations and designate some member of their company as the resident agent or director, charging a yearly fee of about ten dollars. The office maintained in the creating state is the domiciliary office of the corporation in the sense that it is the parental home office, though not any of the actual commercial business of the corporation may be conducted from it. In those parent states where stockholders' meetings are required to be held within the boundaries of the state, stockholders' meetings may be held in the domiciliary office. Otherwise the office may be of no use except as a place designated to the secretary of state where a summons may be served. If a portion of the business of the corporation is transacted in the parent state, the business office of the corporation will serve every purpose, provided there is a resident agent connected with it. Some states require that correct books of account of business transactions and a book containing an up-to-date list of stockholders, their residence, and their number of shares, listed severally, shall be kept at the office in the parent state; that the corporation shall report annually such items as the amount of capital stock and the proportion actually issued; how much was paid in cash, how much otherwise, and in what way; the amount of debts, and of assets; the amount of dividends made, declared, and paid; the amount of capital employed or represented in the state, etc. Such nonresident domestic corporations, organized under the laws of the liberal states, pay an existence franchise tax on total authorized capital or on amounts of capital stock issued and outstanding or based on the capital represented by property located or business transacted in the state. Some states distinguish between domestic corporations whose principal place of business is in the state and those whose principal place is elsewhere in the application of taxes. Railway, insurance, banking, and other transportation and financial corporations are taxed according to special statutes. The expression, "existence" franchise tax, a tax paid to maintain the right of existence, is used to distinguish the tax placed by the parent state on domestic corporations from the business franchise tax, or license tax, placed on foreign corporations by foreign states, by payment of which tax the corporations maintain the right to do business in foreign states.

§ 25. A Corporation's Relation to Foreign States.

A foreign state is any state other than the one under whose laws a corporation is formed. Since a corporation can have no legal existence outside the boundaries of the state in which it was created, it can exercise none of its business functions or privileges in any other states except through the courtesy and consent of the other states. The "rule of comity" is the prevailing courteous and consenting recognition of corporations foreign to the state in which they are exercising a right to do business. The rule of comity is part of the common law and is binding except where modified by the statutory law of the several states. Subject to the limitations imposed by the national constitution, a state may prescribe any conditions upon which a foreign corporation may do business within its territory. Most of the states have put a statutory limitation on this rule for the protection of their citizens from the acts of irresponsible foreign corporations and for the purpose of raising revenue for granting the right to do business. The kind of business referred to is the commercial business out of which a corporation makes its profit and not those acts which the stockholders or corporators perform in creating or maintaining the corporate existence. Where a company maintains an agency or warehouse and sells goods in a foreign state, it is considered as doing business in that state. Part of the corporate assets are represented in the state, materially in the case of manufacturing and mercantile corporations, and by business transacted and protected in the case of insurance and other financial companies. The mere taking orders for goods by a traveling salesman, or isolated and largely fortuitous transactions of business without the intention of continuing business, do not constitute "doing business" in the legal sense. Where, however, a traveling salesman carries articles which he sells direct, without referring an order to the home office to be filled, that act comes within the meaning of "doing business." Sometimes the business is such that a state requires that the foreign corporation shall maintain an office in the state and provide an agent or agents upon whom process may be served. The object of requiring a resident agent is to bring the corporation within the jurisdiction of the state in which it is seeking to do business, so that it may sue and be sued there. The object of requiring an office is that a place may be furnished where the agent may be found and where a summons may be served on him. These provisions facilitate legal actions against a foreign corporation, which might otherwise be able to make the service of process extremely difficult. It is provided that corporations may have license to do business upon compliance with certain conditions. The laws of the states are not uniform in their treatment of foreign corporations. Progressive legislation is in the direction of imposing on foreign corporations the same restraints and qualifications for business that apply to domestic corporations. Justice to domestic corporations demands this. Among the qualifications necessary in one or more states are that a certified copy of the articles of incorporation and the by-laws, and a list of names and residences of the officers and directors, the location of the domiciliary or principal office, the date of the annual meeting and meeting for election of officers and directors, shall be filed with the secretary of state, or other proper state or county officer; that a statement shall be made of the capital stock paid in in cash, and of that otherwise paid in, and how it was paid, and the capital represented in the state by corporate property located and by business transacted in the state; that an annual report shall be made which shall include the amount of debts, or an amount which they do not exceed, the amount of assets, or an amount which they at least equal, and the amount of dividends declared or paid; that any substantial changes in any of the foregoing shall be reported to the secretary of state; that the books of account of business transacted by the corporation shall be kept at the state office or be forthcoming from it (seldom); that a stock-book, with complete information as to stockholders and stock, must be kept at the corporation's office or at the office of a transfer agent in the state, and that the book shall be open to inspection by any stockholder, judgment creditor, or authorized officer of the law; that a resident agent shall be appointed and that an authenticated copy of his appointment and of his acceptance and a certificate of the location of his residence or office shall be filed with the secretary of state or other proper officer; that certain sundry fees or other qualifying fees shall be paid, and also annual taxes on the amount of corporate property or capital represented by corporate property located and business transacted in the state, or on some other basis; that a corporation cannot transact business in the state nor sue without having obtained a certificate of authority to do business. Some states have passed what are known as retaliatory statutes, which provide that foreign corporations seeking to do business in the territory of those states shall pay the same fees and taxes and comply with the same conditions that the domestic corporations of those states would be required to meet in the domiciliary states (the states under whose laws corporations are created) of those foreign corporations. Some states provide that a foreign corporation shall appoint in writing their secretaries of state or commissioners of corporations attorneys upon whom process may be served, dispensing with the necessity of any other agent. The fractional proportion of capital represented by property located in a foreign state and by the business transacted there, where that is the basis on which incorporation fees are based, may be computed by taking the business in that state in a given period, plus the property located therein, as a numerator, and the entire business of the company for the same period plus the entire property, as a denominator. The fraction represents the proportion of the capital stock on which incorporation fees or taxes must be paid in that state. If all the business of a company is transacted in a foreign state, the entire capital stock will form the basis for charging fees.

§ 26. **Capitalization: Definition.**

(1) In a general sense, the capitalization of a corporation means the par, or face, value of all the stocks, common and preferred, which it has been authorized to issue, and of the bonds which are issuable; that is, all the apparent funding resources of the corporation. (2) But in a stricter sense, it is all the actual capital realized from the sale of stocks and bonds, the capital with which the corporation equips itself for business and which it uses in operating. Thus, a company capitalized for $1,000,000 may sell all its securities, stocks and bonds, at such prices that the average price will be but sixty cents on the dollar of nominal capitalization. It will thus have for equipping and operating $600,000 instead of $1,000,000. Or, it may sell $800,000 of securities at par and keep $200,000 of stock unissued, or turn it into treasury stock. It still has a nominal capi-

talization of $1,000,000 but an actual capital of only $800,000. (3) In the statutory sense, when referring to the provision for a certain amount of capitalization in the articles of association, it means the amount of stock authorized to be issued, all of which amount may or may not be subscribed. Bonds are not mentioned in articles of association, except when the amount of bonded indebtedness is limited by statute. (4) Or capitalization is all the actual property of the corporation. This is the definition used in tax statutes. (5) In yet another sense it is the par value of all the stocks and bonds issued, which is the amount of accountability acknowledged by a corporation. This is the definition generally accepted in financial practice. (6) In a legal sense, however, the bonds are not included in the capitalization, but are regarded in their true light of debt owing by the corporation. Capitalization, in the customary judicial interpretation, represents the joint and several interests of the stockholders in the corporation, and so far it is synonymous with capital stock, and is, when the corporation is new and without losses or profits, the amount paid in, or subscribed to be paid in, by the subscribers to stock, either to forward the corporate business or to satisfy creditors of the corporation. When the corporation has been doing business for some time, the term is sometimes modified to mean the sums paid in, or to be paid in by subscribers, with the addition of all profits and gains and the subtraction of all losses and depreciations. Then the term is synonymous with "capital." In discussing corporate finance, the word will be used in the fifth sense, while in referring to the statutory provision of capital stock in the articles of association, the word will be used in the third sense.

§ 27. Determining the Amount of Capitalization.

The amount of capitalization of a corporation is one of the chief things to be determined precedent to filing a charter. When a professional promoter organizes a corporation, he has his plans so carefully made that he knows exactly what the capitalization should be. Unprofessional organizers should know as much and should have their knowledge based on reliable figures. It is necessary to the later financial stability of the corporation.

In the first place, as to the original capitalization of a company, unless the stock and bonds of a corporation are sold at a premium, the par value of all the securities represented in the total capitalization must equal the amount of money required to be invested in the real estate and plant of the corporation, and part, if not all, of the running capital. Usually part of the running capital is borrowed from a bank, unless bonds can be sold which bear a lower rate of interest than would be necessary to pay the bank. When it is possible to provide part of the running capital through the sale of commercial paper, as may usually be done, it will often be found profitable to do so. Thomas L. Greene says: "With few exceptions, where firms [or companies] have command of practically unlimited sums of their own, business success is possible only through the aid of the money lender. Let us suppose, for illustration, that a firm employs a capital of $1,000,000 in its business, one half of which it borrows from the banks on its commercial paper at six per cent. interest. We will suppose also that the firm 'turns its capital over' six times a year, which is only another way of saying that its volume of annual sales is six times the capital. Assuming that our firm is enabled to earn two per cent. net upon its sales, the resulting profits, $120,000, amount to twelve per cent. upon the capital employed. As under our assumption the firm is paying six per cent. on the amount borrowed, or $30,000 yearly, it follows that the actual earnings upon the firm's own capital are $90,000, or eighteen per cent., a handsome return made possible only through the borrowing of money which can be used to extend the volume of trade and to earn something for the firm over and above the percentum of interest paid. The actual profits earned under this system vary in different trades, though usually the volume of business is in inverse proportion to the percentage of profit on the annual sales. Whatever sum we select or whatever earnings we assume, the principle underlying the illustration is the same. Of course a part of the capital of such firm or corporation in business must be invested in credits granted to customers and in some form of merchandise in stock." The amount the company can borrow is the amount of its credit, based on profits and the value of the company's property at forced sale, the value of the property in which the money borrowed is to be invested, and the business reputation of the proprietors and managers of the company. "To borrow one-half of one's necessary capital, in money or goods, is common," says Mr. Greene. The amount of credit a company deserves is the problem of commercial banking. Corporations just starting in business can not usually command as large credit as old established businesses. The most conservative banks give preference in discounts to paper based on actual commercial transactions, over that secured by stationary capital. The most important function of a commercial bank is, by the use of the capital it controls, "to bridge over the periods of credit which necessarily intervene between production and consumption, in such a manner as to give back to each producer, or middleman, as quickly as possible, the capital invested by him in such products in order that he may use it over again in new production and new purchases." From these suggestions one may guess approximately the amount of money a company should be able to borrow on commercial paper, taking into consideration local financial conditions. The commercial paper of established concerns is frequently floated over the country among banks through the agency of brokers in commercial paper.

The proper amount of capitalization, in the sense in which it includes bonds, is determined with reference to the net earning capacity of the future corporation. The average per cent. of net earnings of a period of years, calculated from the experience of other companies in the same line of business, but with reference to its own output, may be taken as a basis, thus allowing for years of low prices or slack demand; or a more conservative estimate of earnings may be made altogether on the basis of the off years in price or demand, thus putting the company in a position where it can meet its interest obligations without question. If the company to be organized has special advantages over others in the same line of manufacture, advantages which will increase the average of its net earnings, these also should be taken into account at a conservative figure. Likewise, disadvantages, if there are any, should be estimated and deducted. After calculating the amount of net profit, provision should be made out of it for a reserve fund for the purpose of extending, repairing, and improving the equipment of the company, for investment in high class bonds which can be pledged as collateral for the raising of funds when money is scarce, or for use in forwarding the "integrating" process by buying into companies which produce materials to be used by this company, or in obtaining favorable connections for trade. A careful business policy would require in a manufacturing concern a substantial reserve out of the net profits for future emergencies, for use in one or all these ways and to allow the company to clean up its indebtedness to its banks at least once a year will assure a much greater stability to the investment value of its stock. So, in figuring the capitalization, and particularly in connection with the interest on bonds and the dividends on cumulative preferred stock, not only the net profits should be considered, but also the policy with respect to reserves. The capitalization, therefore, should be placed at whatever figure the net profits, minus the reserve, will permit, figuring the amount of interest to be paid on bonds and the amount of dividends to be paid on preferred stock and estimating a fair dividend for the common stock. Then, as the earnings increase, the capitalization may be increased from time to time, or the bonded indebtedness may be increased. As to the amount of common stock, particular consideration should be taken of the fluctuations in profits of the business, so that the issue of common stock shall be conservative. It is better that large dividends shall be paid in prosperous years on a conservative common issue than that the company shall be so highly capitalized that in poor years the common shall receive little or no dividends. The end sought in capitalizing should be to make the market value of the stocks and bonds correspond as nearly as may be with their par value. The worth of the corporation, measured by its earning capacity, should correspond to the combined par value of its stocks and bonds. This is the ideal and comparatively practicable condition.* Where this is not the case, a company is either over-capitalized or under-capitalized. Where the combined par value of all the stocks and bonds of a corporation is greater than their market value based on profits, the corporation is over-capitalized. Where the value of a corporation's assets exceeds the par value of its securities, the corporation is under-capitalized. There are decided disadvantages attached to an extreme case of either condition.

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* There seems to be a tendency on the part of the public to limit the amount of capital of a corporation that is justly entitled to profits. Professor Emory Johnson, in American Railway Transportation, points out that the earning capacity of a corporation cannot equitably or logically be made the sole criterion of value. To determine how much capital is justly entitled to profits (a social question the genesis and development of which will not be here discussed), Professor Johnson says the cost of reproduction of the corporate property and the earning capacity must be considered together. "Definite rules for applying this method were worked out by a state tax commission in Michigan in 1900. In determining the value of the physical properties of the railroad—its roadbed, rolling stock, terminals, etc.—the cost of duplication was made the basis of valuation. The railroad company's franchise, the special concessions granted to it by public authority, and the special commercial opportunities upon which its business depended—that is to say, all the non-physical or immaterial elements of its property—were valued in accordance with their earning capacity. To ascertain the value attributed to these non-physical properties a method suggested by Professor Henry C. Adams was followed. According to the method devised by Professor Adams, the value of these immaterial properties was determined (1) by deducting aggregate expenses of operation from gross earnings and adding the income from corporate investments; (2) by deducting from the total income thus obtained an amount properly chargeable to capital—that is, a certain per cent. on the appraised value of the physical properties—rents paid for the lease of property operated, and permanent improvements charged directly to income; (3) by capitalizing the remainder at a certain rate of interest. This method of valuation gives a basis for capitalization that seems to be equitable to all parties in interest—the public, the investor and the company." There are probably conservative corporations that will desire, in capitalizing, to take into consideration this tendency on the part of the public to hold corporations to more strict accountability for the value of property on the basis of earnings when considering the amount to be paid in taxes. Deducting the larger taxes would, of course, leave a smaller net profit from which to pay dividends and interest and would tend to reduce the capitalization.

In over-capitalization, the difference between the face value of a company's securities and the selling value based on the profits of the business represents the amount of over-capitalization, or "water." Extreme over-capitalization is a strong invitation to competition, if the over-capitalized company can pay dividends on its watered stock. It is an announcement to those having capital to invest that there is "big" money in the business and that another company capitalized at a proper figure can earn a large return on the investment. Moreover, since the over-capitalized company has the interest on bonds and dividends on preferred stock to meet, it must maintain prices and will thus insure a greater steadiness in the market so far as its particular influence extends. Its competitors, of course, share in the advantages of stable prices. Besides, economic conditions may be such in certain years that an over-capitalized company cannot meet its interest and dividend charges, and then it is in danger of a receivership and, perhaps, of dissolution. But, on the other hand, in order that the ideal condition may be approximated without the constant change and expense incident to recapitalization, in starting a company prospective increase in earning capacity must be taken into account, and a reasonable present over-capitalization be provided on the basis of the probable larger net earnings of the next few years in order to keep the securities of the company from selling at a premium proportionate to that increase in earnings.

In general, as was said, it is desirable that an investment stock remain near par. Such a stock is better for investment purposes than one that commands a large premium in the market. There is always the possibility of unforeseen vicissitudes, such as competition, waning or greatly variable demand, and unfavorable legislation, which affect the profits of a company and cause the stock to fluctuate greatly in market value. The greatest degree of fluctuation naturally takes place in those stocks which command the greatest premium on the basis of earnings, or in those stocks which are held in so few hands that the "outsiders," small holders and speculators, may suspect manipulation on the part of the "insiders," those who hold the controlling interest in the capital stock and thereby control prices, and throw their stock on the market and perhaps cause a market panic with its not unusual collapse in prices. A stock which is kept near par will usually be more widely distributed than one which commands a large premium. The reason is that a stock that commands a premium of several hundred per cent. is not so readily marketable. If a person has $50,000 to invest, he will prefer to buy 500 shares of a stock at par, or a proportional number of shares at a little more than par, than to pay a premium of four hundred per cent., making a price of five hundred, and get only one hundred shares. He can get stocks and bonds of satisfactory security which, for one reason or another, promise good dividends or pay good interest and which offer opportunity for increase in value without being subjected to so great and sudden changes in value as occur in the market because of rumors, or of the other vicissitudes mentioned. He buys these stocks to hold, not for speculation. Such stocks widely distributed and firmly held protect the corporation not only in the way of maintaining a stable price for the stock, but also in enlisting the sympathy and active support of the stockholders in case unfavorable legislation is proposed, or there is other threatening calamity. The consideration with respect to danger from legislation applies most particularly to corporations that operate under public franchises. It may be asserted, therefore, in view of a desirability for wide distribution, that the price of a stock should not rise far above the point where it will stimulate the greatest demand. The point to which it may rise above the point mentioned is governed by this consideration: a company desires to realize the largest returns possible from its securities when it places them on the market. Therefore, it will not seek, through the price of its stock, to create the greatest demand so much as it will endeavor to create a demand that will absorb all the stock and bond issue at a price that will realize the largest income for itself, and at the same time will effect a reasonable distribution of the stock. This principle applies as much to a speculative stock as to a more distinctly investment stock, because the higher the price the more money must be put up to carry it, while the demand is relatively less. Also, while the fluctuations are much wider in the high-priced stocks when they occur, they are not so frequent, and therefore they afford speculators fewer opportunities for gain. Year in and out the most active stocks on the exchanges are those of moderate price, which fluctuate within small bounds. It follows from the fact of lesser demand for high priced stocks that an owner, in selling them, gets less in proportion than had he put his money in lower priced stocks. So the value of the stocks near par is greater to their holder than are the high priced stocks. They are also more valuable if he wishes to borrow money on them, both because of the larger proportionate value and because, on account of their narrower fluctuation, the necessary margin between collateral and the amount loaned is lessened. From all standpoints of financial economy, therefore, the desirability of a moderate priced stock is apparent. In providing the original capitalization, and in making subsequent alterations of the capitalization, these facts should be kept in mind. They apply in a general way to all large corporations which have in view a permanent and growing business.

§ 28. More Things in Regard to Stocks and Bonds to be Considered before Capitalizing.

A bond is a form of a promissory note, differing from a promissory note only in that each bond is one of a series of bonds, all of which are alike in the amount of payment promised and in the language defining the conditions governing the issue. Usually the bond is a more formal species of commercial paper, bearing a seal and the signatures of witnesses as well as the signatures of certain officers of a company. The security of a bond may be entirely personal, or it may give the purchaser a lien on property. Nearly all corporate bonds are secured, and the common form of security is a mortgage on the property of the company issuing them.

The purchase of a corporate bond conveys no proprietary interest in a company, the bond being merely a credit obligation of the company. There may be first, second and third mortgage bonds issued on a property, and they are payable and collectible as are other forms of paper secured by mortgage, but with variation from other forms in legal procedure for collection. All stock conveys a proprietary interest in a company, but the stock is unsecured and can command only its proportion of the dividends declared out of the profits of a company after the satisfaction of credit obligations. Stock is an evidence of proportionate interest, while a bond is a contract binding the company issuing it to pay a specific amount of money. The interest on bonds must be paid when due, or the company's business may be closed; but the directors may delay indefinitely the payment of dividends on preferred or common stock without the owners having recourse, unless there is fraud. Common stock commands dividends and, sometimes, the exercise of proprietary corporate powers, without preference. Preferred stock commands a given dividend before any dividends are paid on common stock, and, as a rule, is also preferred in the matter of distribution of assets on the dissolution of a company. In corporate finance bonds are generally issued to provide permanent capital at a low rate of interest. Preferred stock is provided because it is often more readily marketable than common stock, or it may be issued to meet some debt of the company, when it is inconvenient or impossible to otherwise meet the debt, or to exchange for property to be used by the company. Also, if the expected profits are large, a large part of the capital can be provided by the sale of preferred stock, and the common stockholders will get the benefit of other profits above the dividend paid to the holders of preferred stock, unless there is a provision that common and preferred stockholders shall share in all dividends above a certain per cent. prescribed for each. Preferred stock is often issued to an amount which represents the value of the property of a company, and common to such an amount as the expected net earnings minus the amount of the preferred dividend claims will justify.

As a rule, a large issue of bonds lessens the market value of preferred and common stock, and a large issue of preferred stock has the same effect on the common stock, unless the value of the company's property is equal to the par value of both combined, or there is certainty that the profits will be so large that the common stock will receive a large dividend. Particularly is this true of cumulative preferred stock, whose dividends, if not paid each year, pile up as a charge against the profits, so that the total unpaid dividends for the several years must be paid before the common stock can receive anything. In liquidation, these unpaid dividends add so much more to the par value of the preferred stock as a claim against the assets of the company before the common stock comes in for a share in the distribution. The value of common stock can scarcely receive a severer blow than through the action of a board of directors in passing (that is, not paying) a dividend on cumulative preferred stock. The principal danger from a large issue of bonds is that, in a time of business depression, the company may not be able to meet the interest on the bonds and may be forced into liquidation. The only way to avoid this danger is for the stockholders themselves to subscribe for the bond issue. In a time of crisis in the business they will not enforce their bond rights against their stock interests. However, in cases where the stockholders would buy the bonds, it would usually be as well to increase and distribute among the stockholders capital stock to the amount of the bond issue, and leave out the bonds altogether, unless only a part of the stockholders are willing to take bonds. The security of a bond issue is the minimum profit of the corporation after operating expenses are paid, and no issue of bonds should ever be made the size of which is such that this profit will not meet the interest requirements. The following of this principle adds safety to the company, and it will also insure a good price for the bonds. It is not good for a corporation to have to sell its bonds at a large discount, and careful buyers must be shown the basis of value for the price they are paying. As a rule the nearer a company can come to limiting the issue of its bonds to an amount equaling the estimated value of its property at a forced sale, the better for the company, so far as concerns the price it can get for the bond issue. The rate of interest on the bonds should be high enough—about the current market rate—so that it will not put the issue at a disadvantage with reference to other bond issues of equal safety which are on the market, for then the bonds will command par both because of their safety and their interest returns. Since the face value of bonds must be paid at maturity, a sale of bonds at less than par is discounting the future by the difference between the sale price and the par of the bonds. The principal advantage of bonds to the stockholder is similar to that of preferred stock,—that the interest paid on them is lower than the customary dividends on stocks, so that the stockholders receive a larger share of the profits than if an amount of the stock equal to the bond issue had been sold. The prevailing interest on bonds is from 4 to 6 per cent., while the dividend on preferred stock is usually 6 or 7 per cent. Common stock may receive any dividend the profits permit and the directors may see fit to declare. In industrial concerns, where there are bonds or preferred shares, profits should be such that the common stock will receive from 8 to 12 per cent., owing to the disadvantages under which it is placed, especially if it is sold at par. Sometimes a company does not expect to realize much from the sale of common stock, and gives free with a certain number of preferred shares, or with a bond, several shares of common stock as an inducement to buy. As the preferred stock in this case usually represents in amount the value of the property and other assets of the corporation, the common stock represents only a part of the expected surplus earnings above the dividend or interest requirements. If it is marketed it may bring 30 or 40 cents, or some other low price, according to its prospects for dividends, and it is not expected that it will receive a large dividend until the profits are large enough to bring its market value near or to par. When the profits grow large enough to pay high dividends, they are the cause, and the higher value of the common stock is the effect, while in a case where par value was paid for common stock it should be the cause, in a proper capitalization, of a comparatively high dividend, if there are the preferred shares or bonds mentioned. The principal compensation in holding common stock is the larger dividend it will likely receive over the preferred shares and over the interest on bonds. Another advantage that may be mentioned here is that it has a proportional interest in the assets of the company to the extent of their full value, while the preferred stock is usually debarred from any interest in the assets beyond its par or face value and arrearages of cumulative dividends. If all the stock of an industrial corporation is common stock, and there are no bonds, or only a small issue of bonds, 6 or 8 per cent. of dividends is a fair return if the value of the assets of the company is equal in amount to the price paid for the common stock issue, or greater than that price.

As has been said, the stockholders are owners of a corporation, and the bondholders are creditors. The latter can demand at the time of maturity of the bonds a certain amount named in the bond as its face value, and no more, and they have a definite claim to the interest named in the bond, and no more. If stock were sold instead of bonds, the additional stockholders would share in all the profits. But as a company can usually make more on the money borrowed through a bond issue than it has to pay in interest, the lesser number of stockholders get all the advantage of the earnings above the interest. However, as the first consideration should be the preservation of the solvency of the company, the degree of variation in the business of the company must be reckoned with in making a bond issue. If the business is uniform in amount and profit from year to year, the issue of bonds is a comparatively safe thing for the company; but if the business or profits are subject to wide variation, the issue of preferred stock is the safer plan. If it is intended to pay bonds at their maturity, instead of refunding the debt the bonds represent by the issue of more bonds, the provision of a sinking fund must enter into the calculation. For this purpose a definite part of the yearly profits must be laid aside to meet the payment of the bond principal. Of course, this will take just so much from the profits used for interest, dividends and prudential expenses, such as a reserve. Instead of paying the principal, large corporations usually issue new bonds and exchange them for the old, or sell the new to new purchasers and use the money to pay off the old bonds, thus making the bondholders permanent creditors of the company. On account of certain economic objections to sinking funds, this is preferable in all cases of staple business, except in those where the productive assets are gradually depleted through years of operation or otherwise. For instance, the products of a mine will give out after a time, and if bonds have been issued a sinking fund must have been created to retire them. In continuous businesses the money that would be used for a sinking fund had better be employed in increasing their earning capacity.

A further consideration with reference to the issue of bonds is this: A bond issue, as was said, is an indebtedness. In taxing corporations many states permit corporations to deduct outstanding indebtedness from their taxable property in determining the amount on which the corporations shall be taxed. Therefore some companies save taxes and state fees by capitalizing for a smaller amount than must be used in their business and issuing bonds to make up the rest.

§ 29. Capitalizing at Less Than Real Value.

There frequently arise circumstances where the corporate form of organization is desirable in a business for only a few of the advantages which it offers. It may be desired to make a division and distribution of interests among only the few persons interested and secure for them freedom from partnership liabilities. If their company were capitalized at its true value, the attention of the public might be called to the profitableness of the business, and competition might be aroused. By capitalizing at less than real value the state fees and taxes are lower, while the practical objects of incorporation are accomplished, and little attention is drawn to the fact of incorporation. The shares in cases of this kind are, of course, worth several times their par value.

§ 30. PLACING STOCKS AND BONDS.

In companies organized by a promoter the disposal of stock is usually attended to by him. But frequently when a corporation is organized, and the promoter's work is considered to be done, all the stock has not been subscribed and the corporators expect to sell the balance to provide funds for more extensive operation, etc. It is always better to have enough stock subscribed before incorporating to run the business, for stock cannot always be sold easily or advantageously. In small concerns, new ones or old ones reorganized, where there is a balance of unsubscribed stock, the sale of it depends usually upon the corporators or such unprofessional salesmen as they may be able to employ. Conservative professional stock salesmen, such as financial bankers and stock-brokers, do not usually take issues of stock for sale where the concern is small and new and its earning capacity uncertain or wholly speculative. In the case of large or old companies, which have increased their capitalization on a proper basis, or in reorganized companies where the stock has acquired an estimable value, or in large companies where the profits are calculable with reasonable certainty, stock and bond dealers, financial bankers—sometimes private, sometimes national,—and trust companies will frequently act as fiscal agents and take stock for sale on commission, or will underwrite it. When stock is sold for a commission the commission is a matter of arrangement between the corporation and the selling agent, and usually depends on the degree of ease with which the stock may be marketed, which depends largely on the financial reputation of the corporators or the corporation and on the prospective value of the stock. When a well paying common or preferred stock is backed by assets which are salable at a figure which will protect the stock at par after prior claims against the assets are deducted, the commission may run anywhere from 4 to 10 per cent. When stocks are underwritten, the profit required by the underwriter depends usually on the actual and certain value of the stock, though it sometimes depends mostly on the underwriter's certainty that he will be able to dispose of the stock within the time specified in the agreement. The underwriting of stocks (and this applies also to bonds) consists in subscribing for an entire issue or balance of an issue at a certain price, to be paid within a certain time, say six or nine months. The object of the underwriter is to sell the securities within that time at a price in excess of what is to be paid. If all the securities are not sold the underwriter must pay for what is left on his hands when the time is up. The underwriter does not expect to use much of his money in the transaction, as he will, in paying his own debt, use the money paid by the subscribers to him. Sometimes a portion of the amount subscribed, usually from 10 to 30 per cent. of it, may be made in the agreement subject to call, and, if called, it is paid. For assuming the risk, and furnishing the small amount called, if any, he will have as his profit the difference between the underwriting price and the sale price to the public. Underwriting on a large scale is done by such banking concerns as J. P. Morgan & Co., the National City Bank, the Bank of Commerce and the First National Bank, of New York. They are really wholesale bond dealers. In unusually large underwriting transactions a syndicate of bankers is usually formed to share the risks and the profits, and a syndicate manager is chosen from among the banks interested to conduct the transaction. The syndicate manager receives an extra share of the profit for the extra services performed. The syndicate agreement simply recites that the several banks agree to purchase at the given price and within the given time the amount of stocks or bonds set opposite their respective names, and to furnish on call a certain amount of money to pay for the stock subscribed. When the transaction is finished the syndicate manager sends each member of the syndicate a check for the amount which was called, and the share of profits which belongs to that member. If all the securities are not sold, and the members must redeem their pledge to take part of their subscription, the syndicate manager so notifies the members and they furnish in proportion to their subscriptions the funds to purchase the securities still on hand. The profits in underwriting vary greatly, and increase in proportion as the securities are of uncertain value. Railroad bonds are more stable and certain in value than those of the industrial trusts. A good three-and-a-half per cent. railroad bond which will probably sell at about 105 will be underwritten at about 98. An industrial bond that sells at par will command to the underwriter a greater per cent. by several points. The preferred stock of an industrial trust which will sell to the public at about 80 cents will be underwritten at from 60 to 65 cents. The underwriter is frequently never the owner of the shares underwritten; he furnishes funds for organizing, equipping or operating the corporation, and undertakes to secure himself and make a profit by selling the securities.

A financial journal says the following regarding the means of distributing bonds:

"The machinery that distributes over the world the steady stream of bonds created by American corporations is little understood outside of Wall street itself. Only the result is noted, namely, that some companies can distribute these securities broadcast with apparent ease, while other companies, apparently of equal strength, appear unable to accomplish the same result without a long period of 'digestion.'

"Roughly, there are three methods whereby a company can sell its bonds. One is to sell direct to the public through the stock exchange, or by actual canvass. Only new companies use the latter means, and bonds hawked around the country in this way are generally of low repute. The sale through the stock exchange is now generally carried out by the fiscal agents of the company, and is unusual except for the sale of small lots of well-known and active bonds.

"A variation of this method is found in the case of Rock Island, for instance. The old stockholders of the railway company were offered $100 in 4 per cent. bonds, $70 in preferred stock, and $100 in Rock Island common. The result is well known. The new bonds went into the hands of a stockholding public, which had them at no stated price, and which sold them freely when the decline came. This method is now generally regarded as dangerous. It avoids the payment of commissions, and thereby makes enemies of the kind who can do most harm.

"The first method of distribution is less popular year by year. It has come to be recognized that commissions must be paid to bankers. In return the bankers loan their credit to the bonds, placing them with their own public following. The commission is, to all intents, the price of the bankers' credit. The commission, therefore, varies. If the company is weak and the banker strong, the commission is very heavy. If the company is strong and the banker weak, the latter is glad to take the bonds at a very slight profit.

"The second general method is to sell the bonds in a block to one of the great underwriters. Pennsylvania, Baltimore & Ohio, Union Pacific, and many others sell direct to Kuhn, Loeb & Co., get the money, and thereafter take only an indirect interest in the bonds. Rock Island sells to Speyer & Co., 'Frisco to Blair & Co. and others, New York Central, Lake Shore, Southern Railway, Erie and others to J. P. Morgan & Co. The price at which these railroads sell their bonds to the underwriters is not generally known. It is taken to be a private matter, but it often leaks out.

"The third method, not uncommon, is to sell the bonds to the big retail bond houses, who distribute them to a wide and wealthy public through advertising and through correspondence. Each of these houses has its clientele. Some are strong in New York, others in Canada, others in the South, etc. They are more or less specialists, and get to be known for a particular grade of bonds or stocks.

"These two last methods, of course, overlap greatly. Harvey Fisk & Sons, for instance, known for years as a big retail bond house of wide clientele, frequently underwrite whole issues of new securities, as in the case of the Electrical Securities collaterals, recently brought out. Similarly, Fisk & Robinson took the whole issue of the new Buffalo & Susquehanna Railway 4 1-2s.

J. P. Morgan & Co., Kuhn, Loeb & Co. and Speyer & Co. generally participate to a greater or less extent in any extensive new bond issue, because their clientele demands it, even though these firms may not be the original underwriters.

"Another phase of the underwriting industry is the 'underwriter's option.' An underwriting firm takes a block of bonds at, say, 97, payable only as resold. The firm then offers the bonds at any price above 97, and pays over to the company 97 for the amount of bonds sold. In this class of underwriting the company generally co-operates strongly with the bond house. A great deal of this class of business is carried on. Bond salesmen for big houses generally carry to outlying cities a commission to sell, at stated price, the bonds of a dozen or more railroads, none of whose bonds are actually owned by the house at the time. The bonds may be called at a given figure within a certain time.

"It is a question how much of this business is done by the big underwriters. Doubtless, if the truth were known, a great many of the sales of big blocks of bonds are of this nature, but they are not generally published as such.

"The reputation of the underwriters is a thing very jealously guarded. A foreign clientele is one of the most valuable assets possible, and a clear record in respect to coupons is a matter of high pride. When a house can say that none of the bonds it has sold to the public has ever defaulted it can make a boast to be proud of.

"Again, some houses have a reputation among the retail dealers for floating bonds at the top price, while others are considered more liberal. Bonds brought out by one house are considered bargains when issued, while bonds brought out by a near neighbor are generally expected to be better bargains in six months or so. This is a matter of local reputation. The bond dealers in the street know all these little things, but the savings banks, the country at large and the foreigners are not so keen."

§ 30a. FINANCIAL BANKING AND TRUST ORGANIZATION.

The organization of mammoth business corporations, many of which have been trusts or have been monopolistic in nature, has given rise to an extended and differentiated use of banking functions. To illustrate the formation of a trust and the operation of financial banking, the following is taken from an address delivered by Thomas F. Woodlock, an editor of The Wall Street Journal, to a bankers' convention:

"The function of commercial banking is to facilitate the production, transportation and distribution of commodities of general use through all the stages that lie between the original producer and the ultimate consumer. In New York, and more particularly in Wall street, banks perform a different function. They conduct a financial banking business, which does for property other than commodities what commercial banking does for commodities. Financial banking facilitates the transportation of property through all its metamorphoses from the hands of one owner to those of another. Financial banks merchandise credit just as commercial banks do, but, of course, a different set of problems arise.

"This distinction between commercial and financial banking is very simple. So is the principle of finance itself. If you come to think of it, the art of finance consists in the transfer of property from hand to hand, which, in the generality of cases, means the supplying of investments and the collection of capital for investment. As conducted nowadays, it means, in fact, the manufacture or collection of securities and their sale to investors. By investors I mean those who purchase to hold for investment, as contrasted with those who are traders, or speculators, because they purchase for quick re-sales. You are, of course, entirely familiar with the nature of securities, which is, in the main, twofold. Securities are either evidence of title or equity, or evidences of debt. I need not waste time in describing them in detail further than to remind you that they exist in every shape, manner and form, and are of every grade of value. Their variety is almost infinite.

"In order to explain the principal operations of financial banking, I shall take a hypothetical case of the very simplest form. Let us suppose a bank starting business with a capital of $1,000,000 and a surplus paid in of $1,000,000. The bank is able to secure 100 depositors, each of whom has $100,000, making a total of $10,000,000 on deposit account. It loans to ninety individual manufacturers of cigars the sum of $100,000 each for use in their business, so that its loans amount to $9,000,000. The bank's condition is then expressed in the following statement of assets and liabilities:

ASSETS.	
Loans	$9,000,000
Cash in vault	3,000,000
Total	$12,000,000

LIABILITIES.	
Deposit account	$10,000,000
Capital and surplus	2,000,000
Total	$12,000,000

"The bank is doing a commercial business, as it is lending money to cigar manufacturers on commercial paper or notes. Some of this money it is lending on call, and some on time, so that it may be able to meet any demands that its depositors may make upon it. Among the directors of the bank is a financier, or promoter, who is cognizant of the business of the bank. The idea occurs to him that a trust can be formed of the cigar manufacturers, from which a promoter's profit can be extracted. He sends his agents to investigate the condition of the various manufacturers' plants, and the information he secures confirms his original idea. He thereupon secures an option from each of the manufacturers to purchase his business at a certain price. The price is fixed upon such a basis that the borrowings of the manufacturers at the bank are to be paid off, and each manufacturer is to have stock in the new trust. The financier proposes a capitalization of $10,000,000 bonds, $10,000,000 preferred and $10,000,000 common stock, and it is understood that the bonds are to be sold to him at 90 cents on the dollar —thus providing the $9,000,000 necessary to pay off the borrowings at the bank, and he has further the option of buying the stocks of the new trust at 60 cents on the dollar for the preferred stock and at 30 cents on the dollar for the common stock. He is bound, therefore, to provide $9,000,000 cash, for which he gets $10,000,000 bonds, and he has the right of putting up $9,000,000 more cash to get all the stocks of the company to be formed.

"He organizes a syndicate to take the bonds at 90, agreeing with the syndicate that they shall ultimately be sold to the public at par, thus netting a profit of $1,000,000 on the $10,000,000 bonds. Of this $1,000,000 he has to have $250,000 for himself, representing the compensation for his initial risk and trouble, the rest being divided pro rata among the members of the syndicate. The syndicate is formed. On a certain day payment is to be made to the cigar manufacturers, who will receive $10,000,000 preferred stock and $10,000,000 common stock in the new company, and have their loan at the bank, amounting to $9,000,000, paid off. On paying off these loans the syndicate will have $10,000,000 bonds of the new company. Inasmuch as the bank is going to be paid its $9,000,000 of commercial borrowings, it has $9,000,000 to loan the syndicate, and, accordingly, the financier arranges to borrow $9,000,000 from the bank for the syndicate, which puts as collateral security the bonds of the new company and such other securities as margin as the bank may desire, these securities, of course, being taken from the syndicate's own resources. The arrangement is satisfactory, and on the day appointed the deal takes place. The bank's condition is then precisely similar to what it was, except that instead of lending $9,000,000 to commercial borrowers on their own notes, it is now lending $9,000,000 on collateral securities to the syndicate. The former cigar manufacturers are now stockholders in the new corporation, subject to the optional right of the syndicate to purchase their holdings at an aggregate sum of $9,000,000.

"The times being propitious, the financier decides that the public will take the $10,000,000 bonds at par, and arrangements are made for a public offering at that price on a given day. The issue is extensively advertised and it attracts the notice of the bank's depositors, one hundred in number, each having $100,000 to his credit. Each depositor makes up his mind that the bonds are a good thing, and each subscribes for $100,000, being the amount of his idle money on deposit. The result is that the syndicate has sold its $10,000,000 bonds to realize $10,000,000, and having paid but $9,000,000 therefor, it has a profit of $1,000,000. If the transaction were closed at this point the $9,000,000 loaned would disappear and the original $10,000,000 deposited would disappear, and there would be $1,000,000 deposits, representing the syndicate's profits, and the bank would have $3,000,000 cash representing its own capital and surplus and this $1,000,000 deposit. The bonds, however, have gone so well that the financier decides that it is wise for him to exercise his option on the company's stock, and he determines to buy from the stockholders, under his option, $10,000,000 of the preferred stock at 60, and $10,000,000 of the common stock at 30, the total cost being $9,000,000. He arranges with the bank to again borrow $9,000,000, this time on the stocks as collateral, with such other margin as the bank may require, as in the case of the bonds. When this operation is completed the bank's position is as follows:

LIABILITIES.

Deposit to credit of syndicate...........	$1,000,000
Deposits to credit of former stockholders.	9,000,000
Capital and surplus....................	2,000,000
Total...........................	$12,000,000

ASSETS.

Loans to syndicate on stocks	$9,000,000
Cash in vault	3,000,000
Total	$12,000,000

"The task of the syndicate now is to sell the stocks thus purchased at a profit. This involves the usual practice of 'making a market' for them, probably on the curb market. Transactions are made of what is called a 'wash'* character, at continually advancing quotations, between brokers employed by the syndicate. I regret to state that the financier will probably endeavor to have judicious paragraphs inserted in newspapers calling attention to the great merits of these stocks. Some newspapers will print them, others will not. Finally, quotations for the preferred stock being marked up to 65 and quotations for the common stock being marked up to 35, the stirrings of cupidity make themselves felt in the hearts of the gentlemen who took the company's bonds for investment. These gentlemen are convinced that the time has arrived for them to take a little speculative 'flyer' inthe company's stocks, and, strange to relate, each one elects to buy for himself on speculation 1,000 shares of the preferred stock at 65, and 1,000 shares of the common stock at 35. Being speculators in this instance, they have to borrow money in order to pay for the stocks, and as each one has $100,000 bonds of the new company, each has plenty of margin with which to make a loan. Consequently they go to the bank and borrow $100,000 each on 1,000 shares of preferred stock and 1,000 shares of common stock, with, say, $30,000 of bonds as margin. The syndicate having sold the stocks which cost it $9,000,000 to speculators for $10,000,000, makes another profit of $1,000,000 on the operation, and is besides enabled to pay off its borrowings at the bank. After this operation the position of the bank is as follows:

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* "Wash" sales are where one broker arranges with another to pretend to buy a certain stock when the first broker offers it for sale. The bargain is fictitious, and the effect is to keep the stock quoted. Or, as in the case above, the plotters buy and sell and run the stock up to a high figure as a basis for actual sales.

LIABILITIES.

Deposits of syndicate	$2,000,000
Deposits of former stockholders	9,000,000
Capital and surplus	2,000,000
Total	$13,000,000

ASSETS.

Loans to speculators on company's stocks and bonds	$10,000,000
Cash in vault	3,000,000
Total	$13,000,000

"The syndicate has cleaned up $2,000,000 on the operation and is content. The original cigar manufacturers have not merely sold their business to the trust, but have sold their stock holdings to the trust, and are now plain capitalists, with $9,000,000 to their credit at the bank. The original depositors are now speculators in the company's stock and investors in the company's bonds. Incidentally, they are borrowers of $10,000,000.

"In a little while the cigar trust falls upon evil days, and the dividend on the common stock, which was started on a 4-per-cent. basis, has to be suspended. The speculators become alarmed and endeavor to sell their speculative holdings. The price of the preferred stock, which cost them 65, falls to 55, and the price of the common stock, which cost them 35, falls to 25. The original stockholders see an opportunity to repurchase their holdings for less money than they received when they sold them, and they conclude to repurchase at 55 and 25, making a total cost of $8,000,000. They have $9,000,000 on deposit at the bank, and they use $8,000,000 of this to buy back the stocks from the speculators, who have borrowed $10,000,000 on them. The speculators are thus able to pay off $8,000,000 of their $10,000,000 borrowings, leaving $2,000,000 still borrowed on security of $3,000,000 of the company's bonds. When this operation is completed the bank's position is as follows:

LIABILITIES.

Deposits to credit of syndicate..........	$2,000,000
Deposits remaining of former stockholders	1,000,000
Capital and surplus..................	2,000,000
Total.........................	$5,000,000

ASSETS.

Loans to speculators on bonds...........	$2,000,000
Cash in vault.........................	3,000,000
Total.........................	$5,000,000

"The affairs of the trust go from bad to worse, and there is a question of its ability to continue interest payments. The price of the bonds falls materially, and the bank becomes anxious. It calls upon the speculators for more margin, and gets from each another $10,000 bonds, being $4,000,000 in all, to secure loans of $2,000,000. The price of the bonds falls further, and the bank demands payment of the loans. The financier, having taken pains at the outset to inform himself of the true conditions, and knowing that the depression in the cigar trust's affairs is but temporary, decides that it would be a good plan for his syndicate to make a bid to the borrowers of 50 cents on the dollar for $4,000,000 of the bonds, this being just enough to enable them to pay off their borrowings at the bank, and this being exactly the amount of the deposit to the syndicate's credit, representing their profits on the business. The speculators accept his offer. He buys for his syndicate $4,000,000 of the bonds at 50 cents on the dollar. The speculators are able to pay off the $2,000,000 they owe at the bank, the syndicate drawing on its $2,000,000 deposit to pay for the bonds. The bank's position then stands as follows:

LIABILITIES.

Deposits of former stockholders	$1,000,000
Capital and surplus	2,000,000
Total	$3,000,000

ASSETS.

Cash on hand	$3,000,000

"The original stockholders think they need a little ready money on hand and draw out their deposits in cash, leaving the bank exactly where it started, viz.: with $2,000,000 cash in its vaults, representing its paid up capital and surplus. I have omitted to take any account of the matter of interest, so as not to unnecessarily complicate the figures, and it is only a matter of detail, anyhow.

"Observe what has occurred. Ninety separate and distinct individual borrowers, each borrowing $100,000, and each owning a cigar manufacturing business, have been formed into a corporation. One hundred individual depositors of $100,000 each, making $10,000,000 in all, have become investors in the bonds of the corporation, and a syndicate, headed by a financier, has extracted $2,000,000 profit from the whole operation. If we suppose the company's bonds again to become worth par, the 'profit and loss' of the operation will be a gain to the syndicate of $4,000,000, as it invested its $2,000,000 profit in bonds at 50 cents on the dollar, which $4,000,000 has been lost by the speculators, who originally had $10,000,000 deposits in the bank, and now have only $6,000,000 of bonds. The position of the individual borrowers at the start is exactly the same, inasmuch as, while they, as stockholders of the company, are now borrowing $10,000,000 on the company's bonds in place of the

$9,000,000 they originally borrowed on their own notes they have secured $1,000,000 in cash, which accounts for the difference.

"It is important to note the factors that may be operative so far as the bank is concerned at the various stages of the whole business. While the bank is doing a commercial business, it must, of course, so arrange its commercial loans as to have maturities falling in all the time, and thus be able to pay its depositors. At the second stage of the operation, however, where the bank is lending on collateral securities, the problem is a little different. Its ability to meet a sudden call on its depositors depends on the ability of the syndicate to pay its loans. The syndicate can only pay its loans by being able to sell securities for cash, either the collateral securities upon which it is borrowing, or such other securities as it may have in its resources. Somebody must be able to buy the securities from the syndicate for cash, or the syndicate cannot pay its loans. It is evident that a sale to speculators merely will not improve the case, unless the speculators can borrow money elsewhere than at the bank, because if the speculators had to borrow from the bank there would simply be a shifting of loans from one borrower to another, which would not provide the means to pay depositors. Therefore, if the depositors of a financial bank want their money, the collateral upon which the bank is lending must be marketable to somebody who can provide the money for the depositors. Convertibility of loans is just as much the first requisite of financial banking as it is of commercial banking, but you will readily understand that the sale of securities to investors is quite a different thing from the sale of commodities to consumers. Where a bank is lending on speculative securities, convertibility in the full sense of the word is more difficult than where it is lending on strictly investment securities. First-class railroad bonds, for instance, can always be sold to investors at a price except in times of extraordinary monetary stringency. Even then they can be sold, because they are the first thing that an investor will buy. Stocks of a speculative character cannot always be sold. There comes a time about once in so often when we have a panic. Such a time, for example, was May 9, 1901. The panic at that time came in the forenoon, and there was time for the rally before the close of the market, the closing prices being, of course, the basis for settlement. Had the panic come at 2 o'clock in the afternoon, and had the market closed at the panic prices, there would have been a record of insolvencies such as never was seen. The banks would, of course, have been very heavy losers all around.

"The hypothetical case that we have considered contains the general principles of financial banking, and, in fact, of finance as it is conducted in Wall street."

The operations here illustrated, with many variations, are common in Wall street and are becoming more common all over the country. This particular illustration shows how the financial banking concerns may make money; not all the operations of financial banking are so disastrous to investors. Most of the operations of financial banking are smaller than those that have to do with the formation of trusts, but they are frequently similar in detail. Such operations are incidental to banking and trust company practices outside of New York.

§ 31. *The Stock Exchange.* Many of the larger cities have stock exchanges, which facilitate the marketing of stocks and bonds and give a certain tacit recommendation to the stocks and bonds they list on account of the rules necessary to be complied with by corporations which seek to have their stocks and bonds admitted to dealings on the exchange. Exchanges do not, of course, guarantee the value of stocks and bonds listed, but they permit only such securities to be dealt in as are thought to have real value. Only large companies with large capitalizations have their securities listed on exchanges, and the advantage of listing lies both in the fact that a broader market for the securities is afforded and that listed securities can ordinarily be hypothecated for loans to better advantage than unlisted securities. The exchanges have committees to which application is made by those who wish to have certain securities dealt in, and these committees pass on the eligibility of the securities as measured by the rules of the exchange. To cite instances of the rules of the New York exchange the following will serve. In the case of reorganized businesses, the exchange demands a description of the new securities issued, a complete financial statement of the business for a period of at least a year previous to reorganization, with details of receipts and expenditures, and a balance sheet. The exchange recommends that a trust company act as trustee of trust deeds or mortgages. Business corporations must submit counsel's opinion on the legality of their organization and of the issue of their securities. Trusts or consolidated businesses must give in statements of the financial and physical condition of their constituent companies and properties, including descriptions of property, real, personal and leased; proof that the real estate is free and clear except as to stated liens; a report of reliable expert accountants, exhibiting the results of business each year for at least two consecutive years, if possible, and a balance-sheet. They shall also state the powers of the directors as defined by the articles of association, furnish an agreement that the companies resulting from consolidation will not dispose of their interests in the constituent companies without authorization by stockholders, and publish at least once a year a sufficiently detailed statement of income and expenditures for the preceding year and the balance-sheet for the preceding fiscal year. All active stocks must be registered at some trust company or other satisfactory place, and the registrar must state the amount of stock registered at the time of application. It is also recommended to the corporations whose securities are listed that they publish to their stockholders at least fifteen days before annual meetings a full report of their operations during the preceding fiscal year, with complete detailed statements of all income and expenditures, and a balance-sheet showing their financial condition at the close of the given period. The stock exchange does everything in its power to accomplish a proper publicity in respect to the corporations whose securities it admits. Corporations which are unable or unwilling to comply with the requirements for admission to the listed department may have their stocks admitted to the unlisted department of the stock exchange by making application and furnishing such information as is necessary to get into this department. The requirements necessary to be admitted to the unlisted department are, of course, not so strict as those of the other, and in consequence the general line of unlisted securities do not stand so high as collateral among the banks. (See, in the appendix, rules of the New York Stock Exchange pertaining to listed and unlisted securities.) On the New York Stock Exchange there are over 1,200 listed stocks and bonds, representing a total amount at par value of about $13,800,000,000 in round numbers, and about seventy unlisted securities, representing about one and a quarter billion of dollars. Nearly one-fifth of the wealth of the United States is represented by securities dealt in on the New York Stock Exchange. Of these, railway securities comprise the larger class, and manufacturing and industrial securities are second. Stock exchanges are voluntary associations and are merely large stock markets with an elaborated mechanism for carrying on easily and justly the vast number of transactions of their members. The New York Stock Exchange is unincorporated, has 1,100 members (dealers in securities), and its objects are "to furnish exchange rooms and other facilities for the convenient transaction of their business by its members as brokers, to maintain high standards of commercial honor and integrity among its members, and to promote and inculcate just and equitable principles of trade and commerce." The securities dealt in on the New York Stock Exchange are of national interest and reputation, while those dealt in on the exchanges of other cities are mostly of local interest and belong to local industrial, transportation, financial and other companies. Mr. Conant has said: "The fundamental function of the exchanges is to give mobility to capital. Without them, the stock and bonds of the share company could not be placed to advantage. Nobody would know on any given day what their value was, because the transactions in them, if they occurred, would be private and unrecorded. The opportunities for fraud would be multiplied a hundredfold as compared with the publicity which is given under present conditions to the least movements on the stock exchange. The mobility for capital afforded by the limited liability company would be meager and inadequate if the holder of its bonds and shares did not know that at any moment he could take them to the exchanges and sell them for a price. He cannot be misled as to this price, because every newspaper in the land, if the security is one of importance, gives him each morning the value which it possessed the day before in the markets of the world. The holder of it thus knows what the average judgment of hundreds of men is upon the value of that security. If it were not thus quoted he would have to rely upon the judgment of a few people, expressing their opinion privately, and perhaps interested in misleading him."

§ 32. The Sale Price of Stocks and Bonds with Reference to Time of Issue.

The features preferred stock has in common with bonds tend to give an impression that the dividends paid on such stock are really interest on the money which was paid for it. And especially is this true when the interest is made cumulative. As has been said, preferred stock paying cumulative dividends usually entitles the holder to a fixed annual income for a term of years, and repayment of his capital in full. If the corporation meets with reverses, he may still claim repayment of his capital in full, although the holders of the common stock get nothing. Also, like the bondholder, the holder of preferred stock has no voice in the general management of the corporation. But neither the credit of the company nor any part of the corporation property is pledged for the repayment of his dividends, nor of the capital he has invested. He is, after all, a mere stockholder, whose capital is risked in the business of the corporation, who can receive no dividends at all until there are earnings from which to pay them, and who cannot compel repayment of any part of his capital except upon distribution of the corporation property after all the debts of the company have been paid and its affairs wound up. It follows that his right to annual, semi-annual, or quarterly payments on his stock is measured by the rights and liabilities of a stockholder rather than a bondholder—in other words, that he receives dividends and not interest. Dividends are distinguished from interest in that they are distributive shares in a common fund that has accumulated from earnings, and are not in any sense compensation for the use of money during the time for which they are paid. The right to dividends arises out of ownership of a share in a common fund, some part of which is to be distributed; and it makes no difference in the owner's right whether he has owned that interest one month or ten years, nor whether the fund to be used in paying dividends was accumulated before he became a stockholder or afterward. When one views the matter from the standpoint that the unissued and treasury stocks are inert and do not earn dividends, there seems to be an apparent contradiction in the law. One might think that such stocks, under this theory, should share in the dividends only from the time when they became active in earning them. This contradiction is not real, since what the corporation is selling is an added interest in the corporation property as a whole. No part of the corporation property may be withheld from purchasers of these stocks, therefore, when any kind of a distribution is being made. If a corporation having 100 outstanding shares of stock, of the par value of $100 each, but owning $20,000 worth of property, were to sell and issue another 100 shares, and the next week declare a dividend to be paid from the $20,000 surplus that was in its treasury, every purchaser of a new share would be entitled to share equally in this dividend with the holders of the old shares. He would be entitled to it because his share carried with it the ownership of a two-hundredth part of all the corporation owned. Preferred stock, like common stock, may be either unissued or treasury stock, and, when sold, draws dividends, as has been said, and not interest; therefore the shareholders must share equally in any fund available for paying dividends, when a dividend is declared, without regard to the length of time the stock has been held. The rule as to bonds issued by such a corporation would be different. The interest paid to a bondholder would depend upon the length of time his money had been loaned to the corporation, and purchasers of a new issue of bonds would not receive interest until all arrearages of interest on an old bond issue had been paid in full. It is apparent that such inequalities as might arise between purchasers of stock who had purchased at different times, would not arise between bond purchasers. Any inequalities resulting from difference in the purchase time of stocks must be adjusted, if at all, by varying the price at which subscriptions for stock are taken as the time for paying dividends approaches, or in proportion to the increase of surplus funds or additional values that belong to the earlier shareholders. To cover accrued values, then, a directorate should sell stock at such an advance over the original price as will not cause a loss to the original purchasers. For instance, if a corporation has increased in value 25 per cent., and the directors determine to sell additional unissued or treasury stock, 25 per cent. should be added to the original price in order that those who came in may contribute their share to the surplus value, and not, by their entrance into the corporation, impair the increased value of the corporate property.

Public stock market practices are as follows: Stocks are ordinarily sold at a "flat" price; that is, at a given figure representing the market value determined without reference to dividend paying time, including the accrued dividends. Bonds, excepting government bonds, which are quoted flat, are sold at a given price without accrued interest being taken into account in the quotation. The accrued interest is to be added to the quoted price and paid in addition. The dividend on stocks goes to the owner of the stock whose name appears on the books of the corporation. Stocks are sold "ex-dividend"; that is, without dividend, after the dividend has been declared and the transfer book of the corporation has been closed for the dividend payment. A stock sold ex-dividend does not, of course, carry with it to the buyer the dividend recently declared. On an advertised day, a given time before the day for dividend payment, the transfer book closes, and no more changes in stock ownership are recorded, the dividends being paid to the stockholders of record the day previous to the advertised day. The ex-dividend quotation on a stock exchange is usually the price of the stock just before the closing of the transfer book of the corporation soon to pay the dividend, less the amount of the dividend. If the price of the stock is 150 (a "dividend on" price), for instance, and the corporation books close for a dividend of 3 per cent, the next quotation will be 147, if nothing has occurred besides the dividend payment to alter the price.

In the beginnings of a corporation, when the stock is first being placed, slight accrued values are frequently given little attention, all persons coming in within six months or even within almost a year sharing equally in the profits without having paid for the profits accrued. But this only occurs where there is more necessity of placing the stock than of being particular that the stock shall be placed equitably.

The articles of association of corporations sometimes provide that dividends on preferred stock shall be paid semi-annually from the date of issue. For bookkeeping convenience, a corporation about to place preferred stock will issue to a trustee a certain number of shares in a block, say 250 or 500 shares, which the trustee will transfer to purchasers in smaller blocks. Dividends are paid on this stock from the time it is issued and the trustee receives the selling price plus added value on account of accrued profits and dividends, the total receipts for the stock being turned over to the corporation treasury. Dividend paying on all this preferred stock then comes at the same time. If all this preferred stock is sold in the six months, or if it is contemplated that more will be absorbed by purchasers than is left over, another block may be issued to the trustee to cover the probable demand, if there is still more unissued preferred stock for sale.

§ 33. Changing a One-Man Business or Partnership to a Corporation.

In making a corporation out of a one-man business or a partnership, the general process is the same as when making a corporation to build up a new business. Since a corporation must have a minimum number of directors, say three, each of whom must usually have a share of stock, the one-man business cannot be turned into a corporation and the one man be permitted to own all the business as before. But this is often practically accomplished by selecting two members of his family or two friends, to each of whom he gives a share of stock, in order to make the required number for organization, and who in turn assign the stock in blank and return it to the principal stockholder, who keeps it deposited in his safe, or elsewhere in his own possession. These persons are made stockholders of record and are then apparently qualified to act as directors. When the principal stockholder desires a change, he can take away the stock and disqualify either director by writing in the name of any person he chooses as assignee, and having a new certificate issued to that person and the transfer recorded on the stock book. The same plan may be followed where a partnership of two is changed into a corporation and a third director is necessary. The corporation counsel is frequently chosen as one of the "dummy" directors. But, often as this is done, it is not an entirely safe method of filling the directorate. The statutes of the state under which the corporation is organized should be carefully examined to find if it is necessary for directors to hold stock before anything of the kind is attempted. Directors should usually be *bona fide* holders of stock, and should have paid money, property, or proper services for it, which fact should be provable. If an individual owning all the stock should so fill his directorate with persons who had no real interest in the business, when the statutes say or imply that directors shall be shareholders, the courts would hold, on proper presentation of the facts, that no corporation existed and that the owner was liable for all debts incurred in carrying on the business. The addition of more capital to extend the business, the division of the business into parts on the corporate plan, or any other legitimate business purpose are proper motives for a corporate organization, but fraud may not be accomplished by so organizing. Business real estate, owned by the business persons organizing a corporation, which they in-tend shall belong to the corporation, will, of course, be transferred by deed to the corporation, and personal property should be transferred by bill of sale which accurately describes the property transferred and includes an agreement that the corporation assumes the liabilities of the business transferred, if that is the plan. The procedure in changing such a business to a corporation is as follows: If the old name of the business has any particular value on account of prestige and good will, and is adaptable to the new business and is satisfactory to the stockholders, it may be well to use it as it stands or to arrange a recognizable adaptation of it as the name of the corporation.* Then the formal incorporation should be made according to plan. An inventory should be made of all properties which constitute the assets of the business, and then an inventory of all the debts, which constitute the liabilities. Subtract the liabilities from the assets, which shows the net value of the business, and determine what part of this net value belongs to each of the individual partners, if it is a partnership concern. Formally transfer to the corporation all the assets of the business, as the inventory shows them, and issue to the incorporators full paid stock for their interests in the business as previously determined. Finally make the proper entries showing the transaction in the stock book of the corporation.

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* Corporation names: H. C. McCollum discusses "Protection by Equity of Corporate Names against Unfair Competition" in the *Columbia Law Review* (V, vi, p. 244). A corporation is protected in the use of its name upon principles very similar to those which govern the protection of trade-marks. An individual as such has the right to the use of his own name in his unincorporated business, even though a previously existing company has acquired a valuable good-will by the use of the same name. In exercising this right, however, the new competitor must act honestly and refrain from any active attempts to deceive the public. In granting relief the circumstances of each case must be considered and the probability of loss must be shown. Most authorities hold that fraud is necessary to support an action based on alleged unfair competition. The question on the cases is, however, still an open one. The strongest argument against the majority of cases is the analogy from trade-mark cases. The author contends for an extension of those rules to the cases under discussion, and that a corporate name when applied to the services or articles offered by the corporation stamps them as acceptable just like a trade-mark. Since fraud is usual in such cases courts have assumed that it is essential.

§ 34. Proper Valuation of Private Business or Partnership Assets, Patents, and Other Property to Safely Constitute Stock Exchanged for Them Full-Paid.

Since it is the rule that stockholders are liable for the amount of unpaid stock subscriptions, it is of importance for those giving property or services in exchange for stock to know when their stock may be considered judicially to be full-paid. The laws of the various states differ to some extent, and the laws of the particular state under which a new corporation was organized will necessarily be a subject of investigation by the persons interested. Usually the appraisal by a board of directors of the property or services paid for with stock is, in the absence of fraud, conclusive upon creditors of the corporation who are seeking in case of insolvency to enforce an alleged liability for unpaid stock. The modifications of this rule in the parental state of any corporation under consideration will be matter for inquiry. In general, any valuation of property or services must be reasonable. Commercial practice may determine to a large extent the reasonableness of valuation of property or services. In the case of the transfer of property of a one-man or partnership business to a corporation, for instance, a reasonable inventory will determine the value of the tangible assets. But stock may also be issued for the good will on the basis of earnings of the corporation and still be within reason. Take a business whose net tangible assets are worth $100,000. Suppose it is earning uniformly from 10 to 15 per cent. annually. Suppose the business is to be transferred to a corporation capitalized at $200,000, $50,000 of which stock is to be paid in in cash and $150,000 in exchange for the business. The holders of the $150,000 stock would be as safe as against the creditors as the holders of the $50,000 stock paid for in cash; for, though the

$50,000 above the value of the tangible assets is "water" in a sense, yet a business that is earning such per cents as those mentioned would be well worth the $50,000 premium. If it is desired to certify the valuation of property and business to the fullest extent, an expert accountant may be employed to do this so far as the books are concerned, and he will probably employ appraisers familiar with the particular kinds of property under appraisement to determine their value. Massachusetts has an admirable arrangement that the president, treasurer, and a majority of directors must swear to a statement giving a description and the value of property exchanged for stock, which the commissioner of corporations shall indorse with his certificate as to its fairness, and file with the secretary of state. Services and patents are subject to a more arbitrary valuation than property. But, in cases of any permitted exchange of property and services for stock, the valuation must be reasonable and without fraud. It is safer to estimate the value of property and services from the standpoint of their value to the corporation rather than from the standpoint of the persons who sell or render services. If a valuation is fair and honest at the time it is made, subsequent depreciation, or the fact that the value did not prove to be as much as was estimated, need not concern the one who received stock in exchange for property or services.

§ 35. **Stock Subscriptions.**

At common law, subscriptions to the capital stock of a corporation are binding as soon as the total amount of capital stock is subscribed and the corporation is created. Previous to the creation of the corporation the subscriptions are a continuing proposition to the corporation to take stock. The creation of the corporation is the acceptance of the contract on the part of the corporation under ordinary circumstances, though a corporation when organized is not bound to accept a subscription. But when accepted, a subscription is binding, provided the conditions attaching to it, if any, have been fulfilled by the corporation. By statute or by agreement in the subscription contract, when permitted, there may be a clause which provides that the subscriptions shall be enforceable when a certain amount, given as the amount with which the corporation will begin business, has been subscribed. Then, although the full capital stock is not subscribed, the subscriptions are due and must be paid as soon as this amount is subscribed and the corporation is created. Subscription contracts should be specific in naming the par value of the shares subscribed, whether they are preferred or common, and should include all matters of moment to the correct execution of a contract.

At common law, a corporation may sue a subscriber on his subscription agreement for non-payment, whole or partial. The statutes in addition generally permit the corporation to declare a forfeiture and to sell stock for non-payment; but the forfeiture must be brought about in accordance with the provisions of the statute or articles authorizing it. When a forfeiture is brought about legally, the subscriber is free from further liability on his subscription contract; but a forfeiture cannot be brought about collusively to relieve the subscriber from such liability. In enforcing the forfeiture remedy for non-payment, the statute should be closely followed in its requirements. The corporation will elect which remedy it will pursue. After a subscription is accepted and valid conditions are fulfilled, a subscriber is a stockholder whether he has paid his subscription or not, and remains so until his stock is legally forfeited by the corporation under statutory procedure. In England it has been held (Licensed Victuallers' Mutual Trading Ass'n., *ex parte* Audain, L. R. 42 Ch. Div. 1, 26 A. & E. C. C. 217) that "underwriting," as applied to shares, means "an agreement entered into before the shares are brought before the public, that, in the event of the public not taking up the whole of them or the number mentioned in the agreement, the underwriter will, for an agreed commission, take an allotment of such part of the shares as the public has not applied for," and that such an agreement may constitute an application for shares on which the underwriter is liable as on a common subscription.

Assessments on share subscriptions, when unpaid, draw interest from the time they are due. The definition of "assessment" is, that it is a resolution, generally passed by the board of directors of a corporation, that the shareholders shall, within a date named, and at a place named, pay a certain percentage of their share subscriptions; and the notice of this resolution communicated to the shareholders is a "call" (Seymour D. Thompson, 10 Cyc. 496). The law relative to notice of assessments in the several states should be complied with in order to enforce subscriptions.

(See Stock Subscription Book.)

§ 36. ADVANTAGE OF FOREIGN CORPORATIONS IN COURTS.

Corporations sometimes desire to be incorporated in another state than that in which their business is located so as to be able to have suits transferred to the federal courts. A corporation of one state, doing business in another state, has the right to bring suits in the latter state in the United States courts instead of the courts of the state, if the amount involved exceeds two thousand dollars. And if a suit involving that amount or more is brought against such a corporation in a state court it has the right to remove the cause to the United States court for trial and judgment. This privilege is given by the constitution of the United States to non-resident citizens, and is enjoyed by corporations equally with individuals bringing or defending suits outside of the states of their residence. It is granted for the purpose of relieving non-residents of the effect of any local prejudice, and a non-resident corporation may waive the privilege and sue or defend in the state courts like a resident corporation if it chooses to do so.

PART III.

CHARTER, ARTICLES, BY-LAWS AND RULES OF ORDER.

CHARTER, ARTICLES, BY-LAWS AND RULES OF ORDER.

§ 36a. The Charter and Articles of Association.
37. The Purposes for Which a Corporation is Formed.
38. Powers Common to all Corporations.
39. *Ultra Vires* Acts.
40. Amendment of Charter and Articles.
41. Irregular Incorporation.
42. Forfeiture of Charter by Non-User.
43. The Beginning of the Existence of a Corporation.
44. By-Laws.
45. Rules of Order.

§ 36a. THE CHARTER AND ARTICLES OF ASSOCIATION.

A private corporation cannot be created by mere agreement of members. It can only be created by the state through authority of the legislature. This legislative authority, contained in the acts by which a corporation is given power to exist and perform its functions, constitutes the charter. It is taken advantage of by a certificate of the intention of the proper number of qualified persons to exercise the right to do business as a corporation, called the articles of association of the corporators, in which are set forth the main purpose of the corporation and the auxiliary purposes and powers which the corporation has a right to under the law and which it wishes to use, and such other essential information as the corporate name, the amount of capital stock, the number of shares into which the capital stock is divided, the place of business, a description of the corporate seal, the duration of the corporation, the number of directors, and any other matters which the statutes require or the corporators desire and have the right to make a part of the fundamental law governing their body. The contents of articles vary with the statutory requirements of the different states. The preparation of articles can only be attended to properly by a competent lawyer. After they have been written, and all desired changes have been made in them, the articles of incorporation must be signed and acknowledged before a notary public or other qualified officer by the persons who are the corporators. If they are made in proper form and are properly executed, incorporation results as a matter of course, the articles having been filed with the proper officer, generally the secretary of state, and the fees having been paid into the state treasury. Then the legal rights of the corporation are complete and it may perfect its organization and begin business. Sometimes a minimum amount of paid-up capital is required before the corporation can begin business, and in cases where this is so the corporation must have had paid into its treasury this minimum amount before it is fully qualified. Also, in some states it is required that a duplicate copy of the articles of association be filed with the clerk of the county in which the principal office of the company is located. A certified copy of the articles will be furnished by the secretary of state for a small fee. The articles of association are oftentimes called the charter.

§ 37. THE PURPOSES FOR WHICH A CORPORATION IS FORMED.

The purposes set forth in the articles must be such as the law of the state permits. They are not usually confined to one specific business. The wording of the statutes is general, and is given a liberal construction by the courts. One principal business and many auxiliary businesses, carried on incidental to the principal business, may be permitted. But, as a rule, the auxiliary purposes must not extend to banking, insurance, steam railway transportation, and certain other businesses that have a close relation to the public welfare, for these businesses must be organized under special laws under which special qualifications are usually imposed. As the purposes for which a corporation was organized must be determined by the statement in the articles of incorporation, they sometimes are set forth at great length. All the latitude the company desires and has a right to under the law, in the way of purposes and powers, should be expressed in the articles.

§ 38. POWERS COMMON TO ALL CORPORATIONS.

There are certain powers inherent in every corporation whether they are mentioned in the charter or not. A corporation is a legal person separate from the stockholders, therefore it has the right to sue and be sued under its corporate name. This power saves the exhibition of the names of its members as parties to litigation. In order to forward the purposes of organization it is necessary that a corporation have the right to acquire, hold and convey property. Except, that sometimes the amount of property it can hold is limited; and sometimes corporations are excluded from the power of holding stock in other corporations, and again, to enjoy the power of holding stock, they are sometimes required to mention in the articles the intended use of the power. A corporation has the right to have officers, directors, or trustees, and agents, and to make by-laws. A charter is commonly expressed in general terms and comprehends the general rules governing the policy of the incorporation. The rules governing the action of the officers, directors, and managers, and other incidentals, are expressed in such detail as desired in the by-laws. The corporation may also use a seal and may "do all things necessary," an expression used to cover acts not expressed specifically which are not always inherent corporate rights, but which may, under the provision, become so in a particular case. By action of the stockholders, a corporation has the power to terminate its existence, or dissolve. These are powers all corporations have in common, without special provision in the articles. The special powers granted the corporations are such as the statutes provide and as are mentioned in the articles of incorporation as purposes and rights intended to be pursued by the company.

§ 39. ULTRA VIRES ACTS.

Whatever a corporation does that is beyond a judicial interpretation of its powers as provided in its charter is, in the language of the law, *ultra vires* (beyond power). A corporation guilty of *ultra vires* acts may forfeit its charter, or it may only be restrained from exercising the powers which it has assumed and to which it has no right. The former punishment is usually imposed only when the act is sufficiently important to affect the public interests, or when a statute specifically provides that certain acts shall be punished by forfeiture of the charter. If a corporation violates its charter, or does not perform its corporate duties in material and important particulars, it is subject merely to regulation by law. As a matter of fact corporations frequently do things which are not provided for in the charter, but the state does not act so long as private persons only are affected. The strict interpretation and enforcement of the *ultra vires* doctrine is adhered to in the federal courts, but many state courts have contemplated it more liberally. The latter have held that an *ultra vires* contract is not illegal and void because of want of authority, and that if the contract is founded on a good consideration and is not void on account of statutory prohibition, it is voidable only, and may give rights of action. It has been held that "the plea of *ultra vires* should not as a general rule prevail, whether it is interposed for or against the corporation, when it would not advance justice, but on the contrary would accomplish a legal wrong." The doctrine of estoppel will be interposed against rights of action or of defense on the ground of *ultra vires* when corporations or persons have so acted that the defense on this ground would be inequitable. Owing to the wide scope of powers now permitted in charters and the liberal modification of the doctrine of *ultra vires* on the part of the state courts, the doctrine in its application to private corporations is not so important as it was formerly. Notwithstanding, those who manage corporations should consider all they wish to do, and in doing things of importance should be sure they have the authority of their charter to do them. When the articles do not provide for the performance of certain acts, and it is desirable that they should so provide, they may be amended to include the powers wanting, if the statutes will permit those acts.

§ 40. AMENDMENT OF CHARTER AND ARTICLES.

Since the charter of a corporation is the law under which a corporation is organized, it follows that the right to amend, alter, or repeal a charter belongs only to the state. There is no such thing, strictly speaking, as amending a charter by action of the stockholders of a corporation. The stockholders, in changing their articles of incorporation, are merely making a variation in certain incidentals which they have a right to vary, add to, or subtract from the charter (the laws) already provided. When a corporation is organized according to law, it has the right to use the powers and privileges conferred upon it by the laws in force when it came into existence. The constitution of the United States protects it in this right by prohibiting all legislation which impairs the obligation of contracts. An amendment or alteration of a charter that cannot legally be imposed on a corporation by a state legislature, may be offered to the stockholders for acceptance or rejection, and their action is conclusive. If the proposed amendment will effect a radical change in the plan and purpose of a corporation, it can be accepted only by unanimous vote of the stockholders; if the change is merely incidental, a majority of the stockholders are empowered to accept it. If the state has a legal right to alter or amend a charter, a corporation has the alternative of accepting the change or of going out of existence. But, as said, the state cannot, on account of its reservation of a right to change a charter, cancel rights which have become vested in a corporation. The power of the state is used in controlling corporations in keeping them within the bounds of the powers and privileges conferrable and conferred by law. The state's power to repeal, suspend, alter, or amend does not extend either to taking away permanently or temporarily rights granted before, nor to the substitution of different rights. The nature and purpose of the corporation, as legally formed, must remain intact. A state may have many legislative acts under which corporations may be organized. The specification of powers granted by these acts imply the exclusion of powers not specified. So, a corporation for a given purpose might be organized under any one of several different acts which provide for that purpose. The choice of the act under which the corporation shall be organized will depend upon provisions conforming most nearly with the main purpose of this particular organization, taken in connection with the auxiliary purposes that pertain to its business. The wording of articles to fit the act under which they are made is an important matter. The act may specify certain purposes and powers either disjunctively or inclusively, the powers conferrable under the act being conferrable only severally, so that no one corporation may have all the powers, or they may be conferrable jointly so that one corporation may exercise all the powers. Remembering the state's right to interfere with the corporation if it is not organized legally, the necessity of employing a lawyer to draft the articles is evident as a business precaution. From the standpoint of changes in the articles by stockholders, after the corporation has been created, the alterations consist usually in changing the corporate name, changing the amount and kind of capital stock, the limitation or extension of the business purposes, changing the number of directors, etc., within the limitation of rights which the act has provided. But the essential character and purpose of the corporation is not changed thereby. A corporation may sometimes change its character and purpose almost entirely by taking advantage of legislative acts which the states sometimes provide, whereby the state offers the corporation certain powers not conferred in the act under which the corporation was organized. This is, in effect, an offer by the state of an optional amendment to the charter already conferred, which the corporation may accept by complying with the requirements of the statute offering the amendment. Of course, a corporation may dissolve and the same business and people may reorganize under another statute, but such procedure destroys the old corporation entirely and makes a new one, so far as the law is concerned. The steps necessary to change the articles of incorporation by action of the stockholders vary in the different states. For instance, New York laws provide that a corporation may change its name by publishing for six weeks a notice of intention to change and by application to the supreme court for an order authorizing the change; that the purposes and powers of the corporation may be altered by a vote of three-fifths of the capital stock; that the number of shares into which the capital stock is divided may be increased or decreased by vote of two-thirds of the capital stock; that the amount of the capital stock may be increased or reduced by concurring vote of the stockholders holding a majority of the stock. Arizona laws provide that any proper amendment may be made by the concurring vote of a majority of the stock. The amendment of the articles by stockholders usually requires as much formality as preparing and filing the original articles, and should be attended to by a competent lawyer. Certificates and documents in evidence of authorized changes, made by the proper officers of the corporation, or other authorities, must be filed with the same state or local officers that were legal custodians of the original articles, and, perhaps, must be given publicity by publication. The formalities may vary with the nature of the amendment, and they may vary in different states with the same kind of amendment. Small state fees are usually charged when amendments to articles are filed. The action of directors is sometimes an amendment of the articles. Though the location of the principal office be specified in the articles, the New Jersey law provides that a concurring vote of two-thirds of the directors shall be sufficient to move the office from a town, township, or city to some other such location. A properly certified copy of the resolution must be filed with the secretary of state and a fee of $5.00 must be paid. Amendments may originate with the state as shown, or, in connection with more common business routine, with the directors or stockholders. Amendments may be considered at a regular meeting of directors or stockholders, the time of which is specified in the by-laws, or the by-laws of a corporation may provide that a special meeting may be called; in the case of a directors' meeting, by a call of the president of the corporation or a certain number of the directors, or, in case of a stockholders' meeting, on call, usually, of stockholders holding a majority of stock. Amendments may be proposed and carried or vetoed in the manner provided in the statutes of the state under which the corporation is organized.

§ 41. IRREGULAR INCORPORATION.

No corporation is created if there are no articles or if the articles are essentially defective in complying with the corporation statutes of the state under whose laws the organizers are seeking to form their company. The language of the law is that there shall be a substantial compliance with all the terms of the general incorporation law.

§ 42. FORFEITURE OF CHARTER BY NON-USER.

If a corporation does not begin business or the exercise of its corporate purposes within a certain period, which varies in different states, it usually forfeits its charter and its corporate powers cease.

§ 43. THE BEGINNING OF THE EXISTENCE OF A CORPORATION.

A corporation exists from the time the articles are executed, recorded, or filed for record, or are approved by a public official or from any other time the statutes of the various states provide. The persons interested in it may have begun business before the conditions precedent to a complete organization had been complied with, and they are then liable as partners for the debts of the business until the corporation assumes the debts. No business as a corporation can be done until all the statutory provisions for the organization are complied with. The legal existence of a corporation is not terminated, however, by a violation of its charter by beginning business before the conditions precedent to a legal existence are complied with.

§ 44. BY-LAWS.

By-laws are the general working rules adopted for the internal government of a corporation. They regulate the conduct of the corporation and define the duties and rights of members of the corporation toward the corporation and among themselves. They apply to those discretionary and prudential matters of corporate and business conduct that are not regulated by statutory law or the corporation's charter. By-laws are of a somewhat permanent nature, in which they differ from resolutions and motions, which have reference to temporary and particular occasions and exigencies. By-laws must, of course, not disagree with the law of the land, common, constitutional, nor statutory, nor with the corporation's articles, and they must be reasonable and equitable; that is, they must make no provisions that are in effect against public policy, or an injustice to any members of the corporation. The by-laws may modify the articles, but they cannot alter them. They should state clearly and succinctly what they provide and should not be a mere repetition of the provisions of the articles of association. They should be made with care and deliberation, for wise by-laws may greatly facilitate the government and management of a corporation and unwise by-laws may seriously impede these functions. They may prevent careless and impolitic actions on the part of officers and directors, or they may interfere with their liberty of action to a detrimental extent. The size of the corporation and the degree of intimacy of the officers and directors with the business will determine largely the necessity of detail into which the by-laws shall go. If the stock is held by a few persons who are officers and directors, and who meet often or conduct the business themselves the by-laws will be few and simple. But in an intricate business, where stockholders and directors are many and meet seldom, where the officers are not superintending the business closely, where the management is in the hands of employes, the by-laws should cover all matters of importance to the internal regulation of the corporation's affairs. Where there are statutory provisions regulating corporation management, these may be included in the by-laws to make the provisions more familiar to members of the corporation. The by-laws should be grouped according to application; for instance, in the order of the usual priority of matters with which the corporate management is concerned, (1) stock; (2) stockholders;

(3) directors; (4) officers; (5) finance and dividends; (6) miscellaneous. In large and intricate companies the corporation counsel usually drafts the by-laws, as well as the articles of association. It has been held that all business rules and regulations of a corporation which do not affect third persons come within the meaning of by-laws. Properly constructed and authorized by-laws are binding on all of the members of a corporation alike. Members are supposed to know the by-laws, and their assent to the by-laws is presumed on account of their becoming members, whether they did or did not know of the existence of by-laws. By-laws are binding upon officers of a corporation whether they be stockholders or not, but it is the rule that they are not binding on third persons who have no connection with the company. Illegal by-laws are not binding. Since the courts do not take judicial notice of by-laws as they do of public statutes, in litigation involving the provisions of by-laws, the by-laws must be produced in court and proved, if they are written, or their adoption may be proved by oral evidence, if they have not been formally recorded.

When a company has been created, the first corporate action is a meeting of the stockholders for the purpose of adopting by-laws, electing directors, and attending to other corporate business. Sometimes the directors of the corporation for the first year are named in the articles of association, and sometimes the stockholders at their first meeting authorize the directors to compose and adopt the by-laws, if there is no previous arrangement in the articles or in the statutory law. As stockholders do not ordinarily have the right of direct participation in the business management of a corporation (the right belongs to the directors and officers), it is better for them to provide such general rules of management, by-laws, as they desire the directors and officers to follow. Of course, when there are only a few stockholders who are also the directors and officers, this is not important. The stockholders (a majority) have the right to make by-laws unless statutory law or the articles of association declare otherwise, or unless the stockholders have given the right to the directors, in which case it is implied the stockholders surrender the right. If the stockholders pass by-laws limiting the power of directors, such by-laws are binding upon the directors as are the articles of association and the state law. If the stockholders give the directors general authority to pass by-laws the directors cannot alter those made by the stockholders in limitation of the directors' power. Directors have no power to modify or violate stockholders' by-laws, unless the articles so provide, but they may waive or modify those made by themselves. The reason for giving statutory permission (New Jersey) to the directors primarily to make by-laws is that, in large corporations where the stockholders are numerous and scattered, it is thought desirable that the directors have more liberty than they are allowed under the common law, or were allowed under statutory law till the New Jersey law was passed. This unusual liberty granted to the directors is not one of the prudent developments of the later corporation legislation, although power is given the stockholders to alter or repeal the directors' by-laws. In all corporations where the stockholders can be easily assembled it is much better for the stockholders to retain the right of making by-laws, unless the right is given to the directors subject to by-laws already passed by the stockholders. By-laws may be repealed, added to, or amended at any time that is necessary or desirable. These things are done according to statute, the articles, or the by-laws themselves, if special provision is made therein, or by a majority of the stockholders in case of no special provision. Whatever authority makes a by-law has the right to repeal or amend it, and amendments have the same force as original by-laws. Changes in by-laws cannot be made, however, where certain rights have become vested by virtue of the previous by-laws. By-laws are sometimes not observed. By consent of all the stockholders, or of the directors, so far as the by-laws made by them are concerned, the by-laws may be waived when it will facilitate business transactions, and the transactions may be conducted in any manner the discretion of the members may dictate so long as they are within the provisions of the law and the articles. Though by-laws are not made to be ignored, in practice many times they are violated and the acts in violation are legalized by assent or acquiescence of the members. If a stockholder objects to an irregularity, he must take steps to defeat the irregularity, else he will be considered to acquiesce, and cannot object thereafter. Unless a corporation is in good financial condition and free from debt, violation of the by-laws may cause much inconvenience, and, perhaps, litigation. Stockholders and sometimes creditors have the right to insist that the corporation's affairs shall be conducted according to the articles and statutes. Hence the danger attending the violation of the by-laws are a restraint upon their non-observance. Illegal corporate action may be defeated by a stockholder or creditor who will take the matter to court. Officers and directors may also become personally liable on account of such violations. Specific penalties are sometimes imposed for violation of the by-laws, but their use is generally unsatisfactory. It is better at the first opportunity to displace officers and directors who are derelict in their duties than to hedge them about with fines. When penalties are reasonable, however, the courts will uphold them. It has been provided by statute (New Jersey) that the violation of a by-law may be punished by a fine of not more than twenty dollars. All fines must be certain and applicable to all cases of a given kind. But no business corporation can, on the authority of a by-law, unless the articles so provide under statutory right, deprive a member of a corporation of his rights of membership or make him forfeit his stock. Sometimes there may be a forfeiture of stock for failure to pay calls and assessments, if the statutes so provide, or if the stockholders consent and indorse on their certificates a contract to that effect. When stock is forfeited and a by-law provides the manner of reversion and disposal of the stock, the by-law must be observed, or the transaction is illegal. By-laws should always be formally adopted, and should be written completely in the minute book. If the corporation is large, copies of the charter and by-laws should be type-written or printed and furnished to the stockholders and employes concerned in the government or management of the corporation.

§ 45. RULES OF ORDER.

Parliamentary law is that body of recognized rules of parliamentary and legislative assemblies by which their procedure is regulated. The name "parliamentary law" is taken from the British Parliament, on whose practice and usage this law is mainly founded. In the American Congress, such changes and modifications have been made in the rules as will better adapt them to usage in this country. The rules as used in the highest deliberative and legislative assemblies of a nation form the basis for procedure for state assemblies, and for minor public and private assemblies. For the use of the various kinds of minor assemblies, including the meetings of stockholders and directors of private corporations, such manuals of modified and adapted practices as Roberts' Rules of Order, Cushing's Manual, Reed's Rules of Order, etc., have been devised.

Rules of order are what may be called the common law of deliberative and legislative bodies, and the decisions of the presiding officers become precedents just as do the decisions of judges in the courts of law. They constitute a uniform and exact method of determining the sense of the assembly as expressed by a resolution, order, or vote. A corporation has the right to make its own rules of order, not in disregard of the provisions of the constitution and by-laws, and to change and suspend the rules at will. It is not unusual for a by-law to provide that meetings of the stockholders and directors shall be conducted according to some hand-book, such as one of those mentioned. In the absence of such a by-law, the only requirement is that those present and entitled to vote at a meeting shall have a reasonable opportunity to present measures for consideration, to be heard on any measure presented, and to record their votes in favor of or in opposition to those measures. Rules of order, regularly adopted, are necessary to those who seek to rush a measure through a meeting without full discussion, or who wish to prevent due consideration of a measure in any manner. This is because no court will be slow to set aside action by the majority which bears evidence of being a high-handed proceeding, unless the supporters of the action can show affirmatively that procedure was according to rules adopted. The application of rules which prevent full consideration and expression by members who have authority to consider a measure and to express themselves on it, is called "gag-rule." Commonly, rules of order are important only as they facilitate the dispatch of business and provide a regular and orderly means of transacting it and assist in keeping a record of what is done. If action is taken by a fair vote after full discussion or the opportunity for full discussion, it will not be set aside by the courts for informality that did not violate any statute or the by-laws of the corporation.

PART IV.

DIRECTORS AND OFFICERS.

DIRECTORS AND OFFICERS.

§ 46. Numbers, Qualifications, Powers, and Right to Choose and Remove.
47. Directors' Meetings.
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50. The Secretary.
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§ 46. Number, Qualifications, Powers, and Right to Choose and Remove.

After the adoption of the by-laws the formal selection of directors and of officers is the next thing in order. In many of the states the number of directors is fixed within certain limits. For instance, the laws of South Dakota provide that there shall be not fewer than three nor more than eleven directors. Most of the states provide that there shall be not fewer than three directors, but not many prescribe a maximum limit. For small corporations a small board is usually more effective, as well as more convenient to assemble. The members of a large board, besides being difficult to assemble, may not feel their personal responsibility in the management of the corporation affairs. Consequently the success of the company, so far as their supervision goes, is more or less uncertain, and their duties are taken over by the officers, thus giving the officers more than their proper share of authority, or the directors delegate the management to an executive committee composed of several members of the board. Though this is often done, it is sometimes carried to an illegal point, as the directors do not have the power to delegate the right to exercise discretion which is vested in them.

In the larger corporations there is often a classification of directors with regard to the periods for which they shall serve. Suppose a corporation is to have nine directors. At the first election three will be elected to serve one year, three to serve two years, and three to serve three years. This will bring about the election of one-third of the board every year. It will be noted that after the first two years, each of the three divisions of directors will serve three years. An arrangement of this kind preserves to the corporation a certain portion of the directors who should be reasonably familiar with the corporation's business, and also tends to prevent radical changes in the business policy. Directors serve until their successors are elected, even if it be beyond their prescribed terms.

Any one who may be a corporator may be a director or officer, as there are no special qualifications necessary unless required by the statute, charter, or by-laws. A director is, however, usually required to be a stockholder. Non-residents of the domiciliary state of a corporation may be directors; but in some states a certain part of the directors are required by statute to be residents of the domiciliary state. Though there are no special legal qualifications for directors and officers, there are, of course, special business qualifications. Directors should, as far as possible, be chosen from those who are specially fitted by education and experience to manage the affairs of the corporation. Men of good personal character and high integrity, intelligence, foresight, energy; men with large comprehension and keen analytical faculties; men who are capable of looking at business with an unprejudiced business eye, who reduce the personal equation to the minimum and thus avoid dissension; resourceful and reasonable men make by far the best directors and officers.

The relation between the corporation, on the one hand, and the directors and officers of the corporation, on the other hand, is that of principal and agent, and the law of agency applies to acts done under this relation. It is presumed that an officer or agent who has executed a contract or done any act for and in behalf of the corporation, has had proper authority, where the act is clearly within the powers of his office or agency; therefore, proof of such authority from the corporation records is not necessary. All such contracts made and acts done bind the corporation. Though the active general management of the corporation belongs to the directors, they have no individual authority to act unless given powers of agency, either special or as officers, by the board as a whole. The general management belongs to directors as a board, and action of the board must take place at board meetings, except in those states which give statutory authority to a majority of the board to pass on matters of business without a formal meeting. When stockholders have delegated powers to the board, the board's authority is supreme. The stockholders can then neither force the directors to exercise the powers delegated nor restrain them from exercising the powers unless the neglect to act or the act is so unjust or so prejudicial to the interests and rights of the stockholders as to warrant an appeal to the courts. Powers delegated in by-laws may be repealed, however. Ordinarily the recourse of stockholders who are dissatisfied with their directors is the election of a new board.

It has been held that neither a corporation nor its directors may remove a member of the board except according to the provisions of a statute, of a valid by-law, or of other constating instrument. But there is modern authority that a corporation has, incident to its existence, the implied power to remove a director or officer for cause, independent of statutory provision or provision in the articles. Where there is no such authority given in the statutes, a corporation will do well to provide in the articles or by by-law for the removal of directors and officers for cause. Directors can be removed only by the stockholders of a corporation, unless there is specific statutory authority given to the directors themselves to remove one of their body. When the directors are given the authority, it usually requires a two-thirds vote. At common law, the grounds of amotion (removal) of a director have been said to be, first, such as have no immediate relation to his office but are in themselves of so infamous a nature as to render the offender unfit to exercise any public franchise—in cases of this kind, forgery, perjury, and the like, there must have been an indictment and conviction in court; second, such as are only against his oath, and the duty of his office as a corporator, and amount to breaches of the tacit condition annexed to his franchise or office; third, such as are of a mixed nature, as being an offense not only against the duty of his office but also a matter indictable at common law—in respect of these offenses the corporation has the power of trial as well as the power of removal.* Corporate action is necessary to the forcible removal of a director (he may voluntarily resign on request), and to make the proceeding legal, the purpose of trying the member of the board should be stated in the notice of the regular or special meeting at which the trial will occur. Further, there should be "a monition or citation directed to the offending person to appear at the appointed meeting for trial; a charge given to which he is required to make answer; a competent time assigned for proofs and answers; liberty of counsel to defend him, and to except to proofs and witnesses; and a solemn sentence after a hearing of proofs and answers." Unless statute or the rules of the organization provide otherwise, witnesses need not be examined under oath. It is not necessary that the evidence be only such as would be admissible in a judicial trial; it is sufficient if it be of such character as would be used by men in their private affairs, so that nothing occurs which violates the principles of natural justice. The trial may be conducted openly, or behind closed doors. Directors or officers appointed by resolution and holding place during the pleasure of the appointing power, are removable by resolution. (Thompson, Cyc. 745, *et seq.*) Where there are statutory requirements for the removal of directors, they must be followed.

The power of the board of directors extends to the transaction of any and all of the company's ordinary and regular business. "For the purpose of dealing with others, it is the corporation." Thus it may borrow money, contract debt, mortgage the property of the corporation, and issue bonds, but it cannot do such radical acts as to increase the capital stock, lease the corporation property, or wind up the corporate business without the consent or express authorization of the stockholders. In the transaction of ordinary business the board is bound by the provisions of the statutes, articles, and by-laws, and in case of non-observance where there is resulting damage, the members are personally liable.

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* Quoted from an opinion of Lord Mansfield, with comment by Seymour D. Thompson.

At common law, directors are personally liable for *ultra vires* acts from which damage comes; and for fraud, trespass, or other corporate act done with their knowledge, consent, or co-operation. As directors are trustees holding the property of the company, they are bound to properly direct and supervise its affairs. The duties of a board and its officers are correlative; on the one hand the duties are directive and supervisory, and on the other they are executive. There are many matters that occupy the middle ground, where it is difficult to fix responsibility. The board is responsible for all things that enter into its rights and duties, but it is not expected to watch the routine of every day's business, or observe the particular state of business transactions unless there is special reason; nor is it to be held for sudden and unforeseen derelictions of executive officers, nor for other accidents which there was no reason to apprehend.

The board of directors is not an executive body, but a deliberative, legislative, appointive and supervisory one. It authorizes and instructs the officers and agents of the corporation to carry out the measures it desires carried out. As was said, the authorization, to be legally complete, must be made at a *bona fide* meeting of the board, and not alone by the assent of the members separately. When officers carry out measures not legally authorized, they may be held liable for any resulting damage or loss to the corporation, if the board, at a subsequent proper meeting, does not authorize or ratify the acts and refuses to accept the benefits of them. Any act which the board could have authorized, and which has already been done, it can make binding on the corporation by ratification at a meeting subsequent to the time of the act; also, if it accepts the benefit of such act with knowledge of the facts, a ratification by acquiescence will be implied without formal retroactive authorization.

Frequently the directors for the first year are named in the articles of association. If they are not so named by agreement of the incorporators, they are elected by the stockholders. The stockholders may also elect the officers, but they usually delegate that right to the directors. As the direct general management of the corporation is in the hands of the directors, it is right that the directors should choose the executive and other officers who manage the details, that the officers may be responsible to the directors and removable by them. "The ministerial agents [officers, not directors] of a corporation, not holding for fixed terms, defined and limited by statute or by-laws, may be removed by the body that chose them, subject only to a right of action against the corporation if such removal resulted in a breach of their contract of employment." (Thompson, 10 Cyc., p. 935.) They are dischargeable as any other employe, without assignment of cause, without notice, and without trial, at the pleasure of the directors. If there be a fixed term of office, removal must be for cause. (Thompson, Corp., §§ 804, 805, 820. See also Clark and Marshall, Priv. Corp., § 666.) The same formal procedure should be followed in removing an officer for cause (incompetency, violation of employment contract, etc.), as in removing directors. Corporations rarely have trouble in dispensing with officers, as a determination to remove shown on the part of the directors will usually bring a resignation, which will relieve the board from the necessity of formal action. In cases of emergency, an officer may be restricted or almost shorn of dangerous power by the passing of by-laws or resolutions. The relations of directors to their corporation and of officers to their corporation are given to be different in this, that the directors are considered to have a franchise in their office, since they usually receive no compensation, or only a nominal compensation, for services, while the paid officers sustain more the relation of employe to employer.

In general, the powers of the officers of a corporation are derived from the power which elects or appoints the officers, and depend upon the terms of their agency. The powers may be conferred by the articles, by-laws, or resolution, or implied from the character of the office itself. An office, in itself, confers no power to control corporate property or to bind the corporation by contract, or otherwise. The duties and powers ordinarily given to the several officers of a corporation, and performed and exercised by them, are generally understood, and acts done and contracts made in pursuance thereof are binding on the corporation. When an officer is about to take an unusual step, one which he is in doubt as to his authority to take, and which may involve liability on his part if he does not have the authority, he should seek consent and authority from the board of directors so as to be relieved of personal responsibility. Corporation officers should be familiar with statutory liabilities imposed on them by the parent state and the state in which the principal business is conducted.

A corporation will always have a president, secretary and treasurer, and there may be, and usually are in large corporations, one vice-president or several vice-presidents, assistant secretaries and treasurers, a managing director or general manager, and an auditor and a counsel. Directors, as directors, are not ministerial officers, as has been shown. Those who fill positions minor to officers and directors are classed as agents and employes. In small companies it frequently happens that the same persons are stockholders, directors, and officers, and they manage the business. The one in whom is reposed the management of a business and the counsel are not always officers, but they are if the by-laws make them so or if the duties assigned to them might give that interpretation. Two offices may be held by the same person where it is desirable. The president and vice-president should be chosen from the members of the board of directors, as they are the presiding officers of the board as well as of the stockholders. It frequently is advantageous to select some of the other officers from the board, particularly the secretary, but it is not necessary. Statutes sometimes regulate these matters, and should be referred to. When officers are elected, they may take office and take charge of the meeting in which they are elected, or they may be installed in office at the close of the meeting and assume their official functions from that time.

A corporation should take care that no one acts for it in the capacity of officer, director, or agent who is not duly authorized. If it permits such person to openly act for it, the person is a *de facto* officer, director, or agent, whether or not he was regularly elected or appointed, and the corporation is bound by his acts.

When officers and directors are to receive a pecuniary compensation for services, it should be so provided in the by-laws, as they are not ordinarily entitled in law to compensation for the regular duties incident to their positions.

§ 47. Directors' Meetings.

Directors' meetings are regular and special. The frequency of the regular meetings depends upon the necessity for close supervision of the corporation's affairs. In some business corporations the directors meet once a month; in others they meet once in three months, once in six months, or even only once a year. Usually directors must meet in the state under whose laws the corporation was organized, but some states provide by statute that the directors may meet outside the state if the articles or by-laws so provide. Provision for notice of meetings should be made in the by-laws, and a given number of days specified as the period that shall elapse between the time the notices are sent and the time of the meeting. The time and place of the meeting are, of course, necessary inclusions. Every director is entitled to a proper notice of meetings, and if the notice of a meeting as provided by by-law is neglected, a director can render void all action taken at that meeting. The secretary sends the notices of meetings, and should present to the meetings and record in their minutes the proof that proper notices were given. If all the directors are present the necessity for previous notice may be avoided by having all the directors sign an acknowledgment of notice and waiver of service of notice, which must be recorded in the minutes. In nearly all cases, the president of the corporation is the presiding officer of the board; but, unless the statutes or articles provide to the contrary, the board may elect any one of its members chairman. Likewise the secretary of the corporation is usually the most convenient person to be secretary of the board. The order of business at the principal annual meeting, which is the first meeting after the election of directors, may be as follows: (1) Calling the roll; (2) reading and approving minutes not previously disposed of; (3) reports of officers and committees; (4) election of officers; (5) unfinished business; (6) new business; (7) adjournment. A majority of all the board (the number provided in the by-laws) usually constitutes a quorum for the transaction of business. Chancellor Kent says: "There is a distinction between a corporate act to be done by a select and definite body, as by a board of directors, and one to be performed by the constituent members. In the latter case, a majority of those who appear may act, but in the former a majority of the definite body must be present, and then a majority of the quorum may decide. This is the general rule on the subject." Statutes may be so constructed as to modify the rule. All directors present at a meeting may vote on any matters submitted; but a director cannot, as a stockholder may, delegate to an agent by proxy authority to represent him at a directors' meeting.

There should be provision in the by-laws for the calling of special meetings of the directors, either by the president or by a given number of the directors, or by both. Notice should be sent by the secretary giving the time, place, and purposes of the meeting. All the purposes of the meeting should be given, else action on other matters than those specified may be rendered invalid if a director interested in those matters failed to attend because he had no information that they would come up for consideration. If all the directors are present, they may act on any matter, whether it was mentioned in the notice or not, and, also, any director may waive the right to proper notice. It is customary to include waivers with the notices when an emergency exists and a meeting is necessary at such a time that would make it impossible to issue notices the given length of time before the meeting as specified in the by-laws. Frequently it is better not to specify such a time for notice of special directors' meetings, especially where the board is small and where it can be easily and quickly called together.

§ 48. The President.

The president of a corporation is the presiding officer at meetings of the stockholders and directors, and is frequently the chief of the executive agents of the corporation, i. e., in the smaller corporations he is often the active general manager of the regular business with delegated power to employ and discharge assistants. In such cases he has the power of a general agent in the customary transactions of the business of the corporation. In large corporations where there are vice-presidents, a chairman of the board of directors, and a chairman of a finance committee, the resulting differentiation of powers and duties modifies the president's work and leaves him to perform whatever special duties are assigned to him by articles or by-laws or are in the line of his duty as he has been accustomed to perform it. The chairman of the board will, of course, relieve the president of the duty of presiding over the deliberations of the board, and the chairman of the finance committee will likely perform some of the functions relating to financial matters that the president would otherwise attend to. Some of the presidential duties may be distributed among the vice-presidents. It should be remembered that the distribution of duties is, to a large extent, prudential, or dependent on circumstances perhaps outside of business—as, for instance, where a president can give only a small part of his time to a corporation's business and much of his work is performed by some other officer. When a president is entrusted with certain duties and receives a salary, he is bound to exercise proper care that the duties are performed, else, in case of neglect and of loss to the corporation, he may be held liable. In his fiduciary relation he is bound to employ the powers delegated to him for the benefit of the corporation and must not use them for his own personal gain and advantage.

Besides the duties of presiding over meetings of stockholders and directors and signing certificates of stock and minutes of meetings over which he presided, some of the duties commonly performed by a president are the signing or countersigning of notes, checks, bills, contracts, and other instruments executed in the carrying on of the customary business of the corporation, and all special contracts, liens, deeds, and other special instruments which are ordered executed by the directors. All such contracts and other instruments made on behalf of the corporation by the president will bind the corporation. In the absence of the treasurer, the president usually may indorse drafts, checks, and other negotiable instruments, either for deposit or collection. When he is acting in a managerial capacity, he makes an annual report of the affairs and condition of the corporation, and calls the attention of the stockholders or board to any matters demanding their notice. He may also make or sign the necessary reports to state officials. The compensation of the president depends upon the amount of time he gives to the business of the corporation, and the real value or market value of his services, the responsibilities he is assuming, his influence and other incidental matters too numerous to mention. If he is not active, he may draw no salary at all. The president should have executive capacity when he has managerial work, and should always be a man having a reputation for cleanness and enterprise in industrial or commercial life.

§ 49. The Vice-President.

The vice-president is supposed to keep in touch with the affairs of the corporation, and in the absence of the president, to act in his place. The same powers and principles that govern the conduct of the president apply to the vice-president acting in his stead. In many small corporations, the office of vice-president is an inactive one, the incumbent having nothing to do but serve on the board of directors, if he is a member of that body. In the larger corporations, the vice-president may be an active official, having the superintendence of some particular part of the corporation's business; or there may be first, second, third, etc., vice-presidents, each having specific duties connected with the regular business. Such vice-presidents may receive such compensation as their services merit; an inactive vice-president will usually receive no compensation. The office is frequently merely an honorary one, offered to some prospective stockholder to secure his more active influence, or it is given to some person of influence whose name counts for much in the community or line of business in which the corporation is engaged.

§ 50. The Secretary.

The common duty of a secretary is the conduct of the routine business of a corporation. He is the custodian of the corporate seal, and of the corporation books; he keeps and reads the minutes of the meetings of stockholders and directors; issues calls for meetings; notifies officers and directors of their election; issues, seals, transfers and cancels certificates of stock, and sometimes signs them with the president (when it is not provided that the treasurer shall sign); closes the transfer book at proper time; affixes the seal to formal instruments, and attests with his signature; prepares the reports which are required to be made to state officials; prepares statistics for reports to be made by the president to the stockholders and directors; attends to the correspondence of the corporation or has supervision over it; and performs all duties imposed by the directors, or which custom in transacting the corporation business has made part of his duty. All contracts made within the range of his customary work will be binding on the corporation. The secretary should be a man of perspicacity, energy and honesty, and should have a general knowledge of elementary corporation law and be familiar with corporate practices, should know something of commercial law and practices, should be familiar with the general principles of corporate finance and accounting, should understand parliamentary law, and be familiar with the corporation statutes of the state under whose laws the corporation was organized and of that in which the principal business is located.

The secretary of a corporation is usually an information bureau for the other officers and directors.

§ 51. The Treasurer.

The general financial agent of a corporation is the treasurer. He is the routine financial manager of the corporation, and has charge of money, notes, and any fund securities belonging to it, as well as of its books of account. He sees to all expenditures and requires receipts and vouchers therefor, and issues receipts for moneys paid to the corporation. If he does not perform this work himself, as he seldom does in large corporations, he superintends the clerical force that does the actual work. Hence, he should be familiar with the principles of corporate finance, and should have an accurate and comprehensive knowledge of bookkeeping and accounting. In many of the small corporations, the treasurer is the bookkeeper. Usage often determines the power of a treasurer to sign notes or to contract on behalf of the corporation. But it is a matter of prudence to define his powers and duties somewhat explicitly in the by-laws. The treasurer commonly signs certificates of stock; indorses for deposit or collection checks, notes, bills, and other negotiable instruments; signs, with or without the president, as the by-laws provide, the checks of the corporation (he should sign with the corporation name, "per James Sully, treasurer"); joins with the president in the execution of all instruments that have to do with the corporation's financial proceedings; makes reports of the corporation's financial condition to the annual meetings of stockholders, and so keeps in touch with the financial affairs that he is ready at a moment's notice to state to the directors the assets, liabilities, or details of any financial transactions of the corporation. If there is a finance committee, some of this work may have been assigned to it to the relief of the treasurer. A treasurer should always deposit a corporation's funds in the name of the corporation. Where a treasurer's position is a responsible one, on account of large transactions and the handling of much money, he is usually requested to give bond. It is better that such bond be secured from a reliable and responsible fidelity insurance company. Such company will keep closer watch over the treasurer's performances, and will take more pains to detect anything irregular in them, than a personal surety, and it will also be more fearless and energetic in prosecuting actions against a defaulting treasurer. The compensation of a treasurer will vary from that of an ordinary bookkeeper to that of an expert financial manager.

§ 52. The Managing Director and the General Manager.

Sometimes a board of directors of large corporations will appoint one of their number a managing director, whose duties will supplement those of the president. When a president who serves in a managerial capacity is often absent from the business, a managing director is a convenience, as he can take the president's place and perform those ordinary duties pertaining to the regular conduct of the business that the president would perform. His duties should be defined in a by-law, or in the resolution by which he is appointed, when his office is temporary. Sometimes there is a managing director where there is also an active president, and in such cases his duties should be specified carefully, so that he will not come into conflict with the president.

The general manager of a corporation attends to the supervision of all the active commercial or industrial business, such as the manufacturing and selling of goods, etc., in distinction from the corporate business. His duties may be assigned him by the directors or the president, and he reports to one or the other. When he is a director, his office is not much different from that of a managing director. Otherwise the position is not so high as that of managing director, as it is more that of an employe, depending upon the contract of employment.

§ 53. The Counsel.

Large corporations retain a salaried lawyer, who works under the direction of the directors or the president. The advantage of a regularly employed attorney to counsel with the officers and directors, to prepare contracts and agreements, and to inspect contracts and agreements sent for acceptance, is apparent enough. Much unnecessary litigation may thus be avoided. The counsel is usually paid a retainer of from one hundred dollars up, according to the advice necessary to be given and work to be done, and is paid extra for all litigation in which he takes part during the year. (See Miscellaneous, The Corporation Lawyer.)

§ 54. The Auditor.

Many of the largest corporations employ an auditor who superintends the bookkeeping, the financial system and reports, and all matters of corporate and business statistics that usually come within an auditor's or accountant's purview. He should not be a partisan of any stockholder or group of stockholders, and should be the most independent employe of the corporation. If a regular auditor is not employed, a corporation may employ an expert often enough to certify the books and accounts. (See Part VII.)

An auditing committee, composed of stockholders or directors, unless there are members who are familiar with bookkeeping and accounting practices, is inefficient for the needs of large corporations. Moreover, their work is usually done very superficially, and also they may be interested in making a form of report which will not disclose all the facts that should be shown. More general use should be made of the permanently employed or the occasional professional auditor.

§ 55. Committees.

As has been noted, a board of directors does not generally have the power to delegate the right to exercise discretion which is vested in it. Therefore, the duties of such standing committees as executive and finance committees, which are composed of members of the board and may have supervision respectively of the general business and financial affairs of the corporation, should be clearly defined in the articles or by-laws. The more specific provision for the duties, and the less discretion in their performance, the better, since the law on this subject has not been adjudicated to any great extent. It is not an uncommon practice, however, among the directors of business corporations to delegate part of their discretionary authority to committees. In New Jersey it has sometimes been provided by charter that an executive committee may exercise all the powers of the board whenever a quorum of the board is not present at a board meeting, as well as at times when the board is not in session.

PART V.

CAPITAL STOCK AND BONDS.

CAPITAL STOCK AND BONDS.

§ 56. The Nature of Capital Stock.
57. Full Paid and Partly Paid Stock.
58. Bonus and Watered Stock.
59. Usual Kinds of Stock.
60. Registrars and Transfer Agents.
61. Incidents of Issue and Transfer of Stock.
62. Bonds.

§ 56. THE NATURE OF CAPITAL STOCK.

As there is no consensus of legal opinion on the exact definition of capital stock, and as the term is frequently used interchangeably with capital, capitalization, etc., the definition framed here is made to accord with what seems to be the general tendency of the courts and what strict accuracy from a knowledge of corporate practice would dictate. Capital stock and capital are distinguishable. The capital of a corporation is, on the initiation of a corporate enterprise, the total of the amounts of money paid or property given in by subscribers to shares of stock, or agreed and secured to be paid or given in by them; when the corporation has been running some time, it is these amounts of money or property in themselves, or the money represented by property purchased, together with all the undivided profits or gains realized in conducting the business, and used in conducting the business, less all the losses and depreciations incurred in operation. Money derived from the sale of bonds is sometimes included in the capital. In law corporate capital belongs to the corporation considered as a legal person or entity, and not to the stockholders, or shareowners. It may change from time to time; it is the net corporate property at any given time.

Capital stock is, in the statutes providing for the organization of private corporations, the amount authorized by the charter as the limit up to which the capital of the corporation may be extended by stock subscriptions. This amount is fixed. More strictly, as a matter of equity, capital stock is the right to that part of the mentioned amount which is made vital and active by being subscribed and paid to the capital account. Under the first definition the capital stock has merely a potential value, while under the second definition its value is actual. Capital shares are the personal property of the several stockholders. They are in the nature of what is known to law as a "chose in action," a personal right to a thing of which one does not have possession, which right, under certain contingencies, may be enforced by law. The corporation owns the capital in a sense, but holds it for the benefit of the shareholders. Capital stock that is paid for, paid-up stock, is a liability of the corporation to the shareholders. The value of the capital stock depends upon the value of the net corporate property, capital, and this value may be more or less than the face, or par, value of all the shares. Profits and gains are part of the capital till they are distributed, as in dividends, for instance, among the shareholders. Dividend rights belong to capital stock, and, in this enlarged view, capital stock is the total amount of the issued rights to share equitably in the net capital, or assets, of the corporation, and also in the net earnings as they accrue and are distributed. Capital stock is not tangible property, but it is usually represented tangibly by the certificates of shares. The right to the shares of property is never realized except on the dissolution of the corporation and on the distribution of its assets, but it may be practically realized by selling the right to another for the value of the share or shares which it represents. The sale is made by formally transferring the certificate of stock to the purchaser. Shares of capital stock are generally subject to levy and execution as is other personal property.

A corporation for profit must have capital stock, and a corporation not for profit may or may not have capital stock. But a business corporation for profit or a capitalized corporation not for profit may exist without share ownership in the absence of any statutory or charter provision to the contrary, as in a case where the rights of the members in the capital stock pass with their rights as members, as sometimes happens in lodge organizations.

§ 57. FULL PAID AND PARTLY PAID STOCK.

Stock is full paid if it has been paid for at par in cash or in full equivalent to par value in property or services, where this latter form of payment is permissible. If full par value has not been given for the stock it is only partly paid. Stock issued "full paid and non-assessable" in good faith and without fraud is in no way obligated to the corporation or its creditors, except in some states for labor, nor to the corporation for assessments imposed, except in such states as Minnesota and California, where a liability is imposed on private business corporation stock as on bank stock, making the holders thereof liable in excess of the par value of the shares. If there are not restrictive statutes, stock may be issued at such a price as the corporation directors, on authority of the stockholders, desire. Stock is frequently issued in exchange for only a part of its par value and, in the absence of a statute constituting such stock "full paid and non-assessable" when so issued, the holders thereof are liable to creditors of the corporation in the difference between the amount paid and the par value thereof, but they are not liable to the corporation itself. This applies to original purchasers and subsequent purchasers who know of the fact that the stock is only partly paid, but does not apply to subsequent purchasers for value who are innocent of the fact that the stock is only partly paid. These last are not liable to creditors nor to the corporation. When stock is issued full paid and non-assessable, the certificate should so recite.

§ 58. BONUS AND WATERED STOCK.

Where there is no constitutional or statutory prohibition a corporation may give away common stock with bonds or preferred stock as a "bonus"; or it may issue stock under an agreement whereby the holder is to pay less than the par value. Such stock cannot be held liable to the full par value as between the holder and the corporation or as between the holder and stockholders who acquiesce in the issue. The transaction is binding on the corporation and on acquiescent stockholders. But if the stock is an original issue on the formation of the corporation, the transaction is a fraud against creditors who have given credit on faith that the stock is full paid. If the corporation becomes insolvent, the stock issued as a bonus or only partly paid will then be held liable to the full amount of the par value. This is the general and best opinion, though in New York it has been held (Christensen v. Eno, 106 N. Y. 97, 12 N. E. 648) that the liability of a shareholder depends upon his contract with the corporation, either express or implied, or upon a statute fixing the liability, and, in the absence of contract or statute, one who accepts shares as a gift does not commit a wrong against the creditors nor make himself liable to pay par for the shares in case of corporate insolvency and debt. But it is generally true that those who became creditors before bonus or partly paid stock was issued, and those who become creditors with knowledge of the facts cannot recover against such stock.

In the absence of statutory permission, the only case in which it can be generally regarded as safe to issue bonus or partly paid stock without liability for the full par value is when such stock is issued at its marketable value by an active corporation in order to pay its debts and save itself from insolvency. In some states the peculiar wording of the statutes will make this unsafe. In the case of Handley v. Stutz (139 U. S. 417; Wilgus's Cases), an active corporation issued bonds, and to make them marketable, gave as a bonus an amount of stock equal to the face value of the bonds. The price fairly represented the market value of the stock and bonds. The court said: "To say that a corporation may not, under the circumstances indicated, put its stock upon the market and sell it to the highest bidder, is practically to declare that a corporation can never increase its capital by a sale of shares, if the original stock has fallen below par. * * * No one would take stock so issued at a greater price than the original stock could be purchased for, and hence the ability to negotiate the stock and to raise the money must depend upon the fact whether the purchaser shall or shall not be called upon to respond for its par value." The opinion of the dissenting judges is in line with certain decisions which are against the view that the holders of such stock will not be liable to creditors, on the theory that the stock is not fully paid.

§ 59. USUAL KINDS OF STOCK.

The power of incorporators to issue share rights in capital and the privilege of being exempt from liability as partners are in the nature of a franchise granted by the state. In the absence of a provision to the contrary, or because of a special provision for classes of stock, the members of a corporation may issue more than one kind of stock, preferring one or more classes as to dividends, and as to the distribution of capital on dissolution. Where stock is not classified, all the stock is common.

Common stock is that which commands dividends and shares in the distribution of assets on the dissolution of the corporation, without preference. It has been said, also, that it exercises proprietary corporate powers without preference, but, when preferred stock is barred from voting, this part of the definition is not exact, as the common stock is then preferred in the exercise of proprietary corporate powers.

Preferred stock commands a given dividend which must be paid or provided to be paid before any dividend can be paid on the common stock; usually, on dissolution, it commands its full face share in the assets before any distribution is made to the common stock. Unless there is express provision to the contrary, preferred stock shares equally with common stock in all dividends above the dividend assigned to the preferred stock, after the common stock has received a dividend equal to that provided for and paid to the preferred. Where it is desired to limit the preferred stock to its preferential dividend, the right to participate further must be specifically denied. It is not usual, however, for preferred stock to participate in dividends beyond the specified per cent. Also, unless there is express provision to the contrary, preferred stock shares equally with the common stock in the distribution of assets on the dissolution of a corporation, without any preference. But preference in this respect is usual, and, when desired, should be specifically stated in the articles. The common arrangement is to provide for the payment of the par value of the preferred stock and arrearage of dividends before anything is paid to the common stock. There must, however, be statutory authority, direct or implied, in order to be able to create a preferred lien on a corporation's property. That is, when the law has generally defined the rights of a holder of stock, no modification of those rights can be made by granting preferences to one class of stockholders over another without express statutory authority. But when the statute does not define the rights and liabilities of stockholders, it has been held that they may, without such express authority, be divided into the classes and preferences given at the time the stock is issued. Sometimes preferred stock is made by statute to carry the right to a preference in the distribution of assets, as is true of the New Jersey law.

There may be one or more classes of preferred stock, drawing the same per cent. or different per cents of dividends, the dividend on the first preferred to be paid in preference to the dividend on second preferred, and so on. When preferred stock draws a certain dividend and participates further in the earnings together with the common stock, as, for instance, when the preferred stock shall draw 6 per cent. and shall share with the common stock in all earnings distributed as dividends above 6 per cent. on each class, it is usually not denied the right to share in surplus assets above those required to satisfy all stock claims on the dissolution of the corporation. Preferred stock dividends are commonly 5, 6, or 7 per cent.

Preferred stock can claim no dividends unless there is a profit being made by the corporation, i. e., unless there are net earnings. Net earnings for a given year are the gross receipts less the cost of operating a plant to earn the receipts, which includes all productive expenses and the cost of restoring the plant to the condition it was in the first of that year. This definition permits one to determine whether the plant is being run at a profit. But from these net earnings must be deducted the interest on debts and such non-productive expenses as damage claims paid. The remainder is the real profit of the shareholders out of which they are entitled to dividends. But, if the property which is the security for the funded debts of the corporation deteriorates in value so that the corporation is not able to renew the debts at maturity, that is a justification of refusal to pay dividends on preferred stock. In general, the right to preferred dividends is subject to the just discretion of the directors of the corporation; and, further, the right is usually confined to the profits in each particular year, i. e., the dividends are not chargeable to the profits of the next succeeding year. Or, as it is usually expressed, the dividends are non-cumulative. When this principle is remembered in connection with the principle that shareholders are entitled to dividends out of the earnings, it is apparent that directors are not justified in withholding dividends on preferred stock if the corporation property is able to maintain the funded debt. But it has been held that the preferred stock contract may be expressed in the way of a guaranty of dividends and that such guaranty will make them cumulative. It follows then, that dividends on preferred stock may be made either cumulative or non-cumulative in the preferred stock contract, and that the intent should be clearly expressed in the articles and in the contract as printed on the preferred stock certificates.

It may be provided, as mentioned, that dividends on preferred stock shall be either cumulative or non-cumulative; that is, the dividends, when not paid in any given year or series of years, shall or shall not accumulate as a charge against the profits of the corporation and shall or shall not be paid in full before any of the profits are distributed as dividends on the common stock. It may also be provided that preferred stock may be bought in, redeemed by the corporation at par or with a premium of several per cent. above par, after a certain time limit. Preferred stock may not be redeemed when so doing would impair the capital stock or defeat the rights of creditors. When redeemed, preferred stock is still a part of the capital stock of the corporation, but it no longer has rights in the dividends or assets of the corporation. With the consent of the stockholders, however, it may be reissued, and it will then resume its former rights. The redemption contract clause may read so that the redemption is discretionary with the directors.

Unless express provision is made to the contrary, preferred stock carries the same voting and other proprietary corporate powers as common stock. But ordinarily the right to vote and the right to take part in stockholders' meetings is denied, the right to manage the company being reserved for the holders of common stock against the right to receive preferred dividends on the part of the preferred stockholders. Sometimes it is provided that preferred stock shall not vote so long as preferred dividends are paid regularly; or that, if they are not paid for two or three successive years, then the preferred stockholders shall have the right to vote. There are as many forms of preferred stock as there are conditions attached to its issue. All such conditions, all preferences, limitations and special rights should be expressed on the certificates of stock, as they are in the nature of a contract between the corporation and the preferred stockholder. If a person buys preferred stock on whose certificate the conditions are plainly stated, he is estopped from asserting ignorance of the conditions, and cannot on that account recover against the corporation.

Preferred stock may be provided for in the original articles, or by consent of all or a certain proportion of the stockholders, as the statute or articles provide. Its issue cannot be made by authority of a by-law unless under statutory authority. There is sometimes a statutory limit on the amount of preferred stock that can be issued in proportion to the amount of common. In some states it is provided that the aggregate amount of preferred stock shall not exceed double the amount of common.

Guaranteed stock is the stock of a corporation which is leased to another corporation, the lessee guaranteeing the dividends on the stock of the lessor. Cumulative preferred stock is sometimes unwisely called guaranteed stock; the specific use of the term should be confined to the definition given.

Convertible stock is stock which is issued as being redeemable in bonds of the corporation selling it, or in cash, at the option of the holder, or otherwise according to the contract. There must be express statutory authority for issuing convertible stock, as in New Jersey. Bonds convertible into stock have long been known, but the opposite arrangement is more recent.

Founders' shares are a new class of stock in America, and are not in general use. They are more common in England. To this class of stock belong the surplus profits of a corporation, or a portion of the surplus profits, which remain after paying fixed dividends on the preferred and common stock, and, perhaps, after setting aside also a given amount of the profits for the reserve fund, whenever a distribution of the surplus profits is determined upon. Suppose a corporation is organized with $500,000 capital stock, $300,000 of which is preferred and $200,000 common. Suppose $50,000 of this common stock is set aside as founders' shares, and after 6 per cent. is paid out of the net earnings as a dividend on the preferred stock, the surplus profits are to be divided equally between the common stock and the founders' shares. This would make the founders' shares worth four times as much as the common stock on the basis of earnings. Founders' shares may be issued under the New Jersey law, but under the laws of most of the other states they are now impossible. There is no particular advantage that can be derived from their issue that cannot be had from the judicious issue of common or preferred stock. Founders' shares are commonly used as compensation for promoters or others who, by lending names or influence, have forwarded the interests of a corporation.

Deferred stock claims dividends after the payment of dividends on some other class of stock, or after certain obligations or liabilities of the corporation are paid. It is an unusual form.

Special stock is a kind thus far issued only in Massachusetts. Cook on Corporations says: "Its characteristics are that it is limited in amount to two-fifths of the actual capital; it is subject to redemption at par after a fixed time, to be specified in the certificate; the corporation is bound to pay a fixed half-yearly sum or dividend upon it as a debt; the holders of it are in no event liable for the debts of the corporation beyond the amount of their stock, and the issue of a special stock makes all the general stockholders liable for all debts and contracts of the corporation until the special stock is fully redeemed."

The foregoing are classes of stock distinguished from one another on account of the conditions that attach to their issue. Stock is further divided in kinds with reference to the status of the stock with reference to its issue, *per se*.

Unissued stock is the capital stock authorized in the articles of incorporation, or that part of it which has not been exchanged for a consideration, and in which no person has yet acquired property rights. It merely represents the right to admit new stockholders, and has no value in itself. It has no active stock rights, and is not an asset of the corporation.

Issued and outstanding stock is that part of the capital stock which has been bought and paid for, and to which the original purchaser or the purchaser from him is usually entitled without further pecuniary obligation to the corporation. It is supposed to carry with it an interest in the property of the corporation equal in value to the consideration paid for the stock. This is not always true, and, in fact, it is usually true only when all the issued and outstanding stock has been issued at the same price, and the assets of the corporation have remained equal in value to the amount received for all the stock issued. The equality of interest and value of the consideration paid therefor is shortlived in any corporation. As soon as money is put into manufacturing property and machinery the value of the property and machinery is usually less than the price paid for it until the success of the project as a money-making investment is demonstrated. That is, if it were necessary to sell the property and machinery at a forced sale, it would usually bring less than was paid for it. So if the business project is a failure, the worth of stock is likely to be much less than was paid for it. Further, if the project turns out to be an exceptionally good money maker, the growth of the plant and business will rapidly put the value of the interest represented by stock much in excess of what was paid for the stock, and if a large dividend is being paid on the stock the market price may be still higher than the value of the interest as represented by the assets as shown by the books. The rights of issued and outstanding stock are not merely potential, but actual, according to its class and the conditions of issue as defined in the statute, in the articles, or in the other authority under which it is issued.

Treasury stock is issued and outstanding stock that has come into possession of the corporation which issued it by purchase, donation, or in liquidation of a debt. If it has been issued full paid it remains so, even if sold again below par, and it is considered an asset of the corporation for bookkeeping purposes. But such stock, so long as it is held by the corporation or its representatives as treasury stock, neither participates in dividends nor in the meetings of the corporation as voting stock, though it still represents a paid-for interest in the property of the corporation. The creation of treasury stock is often made a device for selling stock below par and at the same time constituting such stock legally full-paid. A corporation will be organized for the purpose of taking over the business or property of another corporation, or of individuals, and the new corporation will issue its stock full-paid in exchange for the business or property of a certain valuation. Then the seller will give back to the buyer corporation part of the stock as treasury stock, to be disposed of as the directors may determine. Or it may be put in the hands of trustees for sale or disposition under certain conditions, or as they or the directors may determine. Such stock is usually sold below par, or it is given to well-known men for the use of their names and influence in promoting the welfare of the business, or otherwise, and such stock is legally full-paid and exempt from all liability. It may also be given away as a bonus with bonds or preferred stock with the advantage over common stock that there is no liability.

Treasury stock may be assigned to the corporation by name, or to "the treasurer of" the corporation, or to the trustees who are to hold the stock. The secretary makes the usual transfer on the stock book and cancels the certificates turned in. When the directors sell the stock again, the treasurer, if the stock is in his name or in the corporation's name, orders the secretary to issue new certificates to the purchasers. When treasury stock is in the hands of trustees it does not appear on the books of the corporation until it is sold, when the certificates are assigned to the purchasers and the money is turned over to the treasurer.

Overissued stock is that issued in excess of the total amount of capital shares authorized by the articles of association. Such stock is void under all circumstances.

§ 60. REGISTRARS AND TRANSFER AGENTS.

In the history of corporate practices there have been many fraudulent overissues of stock, so that many honest corporations have sought to reassure the public and to guarantee it against fraud by appointing reputable trust companies to act as registrars and transfer agents for their stock. The reputation of the trust company has a great deal to do with the guarantee that the stock issues are regular, for, if it is inclined to be unscrupulous, it can assist a corporation in defrauding the public. A thoroughly reputable trust company will not undertake to register an issue of stock unless it is convinced of the good repute of the directors and the manager of the corporation. Where the directors of a corporation are but little known, but are known favorably to the officers of a trust company which is widely and favorably known, the sale of the corporation securities is often greatly assisted by the appointment of that trust company as registrar and transfer agent. Some of the stock exchanges, including the New York stock exchange, insist that stock shall be signed by a trust company or other reputable financial agency as registrar before they will list the stock of the corporation seeking to have its securities listed. The specific duty of a transfer agent is to make the transfers of the stock of a corporation, being satisfied of their regularity and freedom from fraud. The specific duty of a registrar is to sign the new certificates of stock presented by the transfer agent as evidence that there is not an overissue of stock and that the transaction is otherwise regular, and to keep a register of such stock, with the name and address of the owners, at the registration office. It is apparent that the work of transfer agent and registrar may be performed by the same financial agent or by separate agents for each duty, but it is almost essential that two agents be employed. (See p. 307.) It stands to reason that a transfer agent and registrar, when employed independently, should be independent in fact, and should have no collusive connection with the corporation by which employed. As at present conducted, the work performed by registrars is not as much of a safeguard as it should be. Mr. Jordan J. Rollins has said: "According to the practice in New York, a registrar seldom requires more than the exhibition of a cancelled certificate of stock for a given number of shares, and the presentation therewith, either by the issuing corporation or by its transfer agent, of a new certificate for the same number of shares in the name of the transferee of the cancelled certificate. Thereupon the registrar signs the new certificate without requiring other evidence of the correctness of the transfer." As transfer agents and registrars are generally appointed and assume their work in pursuance of a resolution passed by the directors of the employing corporation, the relation of principal and agent obtains without specific and detailed contract beyond the mere carrying out of the resolution permitting the employment and, perhaps, arranging for the compensation. The lack of specific conditions under which the work is to be performed, and the present looseness of conducting the work, make the field of transfer and register agency worthy the attention of those engaged in bettering business methods.

Owing to the comparative indefiniteness and lack of differentiation in the work of these agencies, their duties and liabilities have never been fixed clearly either by law or custom. On a principle of the law of agency a principal corporation has been held to be liable to a good faith purchaser for value in a case where a registrar fraudulently allowed an overissue of stock. This was in the well-known case of the New York and New Haven Railroad, which had $3,000,000 capital represented by 30,000 shares of stock. Schuyler, who was president of the company and its transfer agent, sold and issued certificates representing an additional 20,000 shares, or $2,000,000. The courts have not handed down decisions which would warrant the assertion that the trust company or other agency acting as registrar and transfer agent could itself be held liable for delinquencies or fraud in performing its work. But, as the purpose of employing such an agent is to guarantee safety and regularity, the agent should be held liable for neglect. There are certain decisions which support this view (Jarvis v. Breach Co., 43 N. E. 68, 31 L. R. A. 776; Windram v. French, 24 N. E. 914, 8 L. R. A. 750). It has been held that when the word "countersigned" has been used by the registrar, the registrar is liable, because countersigning is attesting the authenticity of an instrument (Fifth Ave. Bank v. Railroad Co., 33 N. E. 378, 19 L. R. A. 331). From the fact that a corporation may be held liable for fraudulent issues of stock, it follows that the stockholders may be protected by having a trustworthy agent distinct from the officers of the corporation, employed for the purpose of registering and transferring stock. When the duties and liabilities of transfer agents and registrars are clearly defined by judicial decisions or statutes, their services will be an important part of business mechanism. Mr. Rollins, a New York lawyer, who was quoted before, has suggested that the powers of trust companies, with reference to their acting as registrar and transfer agent, be expressed in the statutes as follows: "To transfer, register and countersign certificates of stock, bonds and other evidence of indebtedness of corporations, with liability to such corporations and to the owners or holders of such certificates of stock, stock, bonds or other indebtedness of corporations solely for the negligence or willful misconduct of its officers in reference to such certificates of stock, stock, bonds or other evidences of indebtedness, or in the appointment or employment of its agents, clerks or employes dealing therewith." Because both corporations and their agents have tried to avoid the responsibility for illegal issues and transfers, a law of this kind would assist largely in distinguishing the respective liabilities of the corporation and its agent.

§ 61. INCIDENTS OF ISSUE AND TRANSFER OF STOCK.

As was said, certificates of stock are the tangible evidence of rights to a certain share in the capital, franchises and dividends of a corporation. Certificates should not be issued, therefore, till the consideration for which they are given is paid in full. A corporation should issue receipts to a subscriber for stock for part payments, and, when full payment is completed, should exchange the certificates for the receipts. Receipts may be made transferable, if that is desired. If a person presenting a certificate for transfer is without doubt the legal owner, he may demand and enforce a transfer. The corporation or its agent should insist upon the surrender of an old certificate when a new one is to be issued in its place, and should write or stamp "cancelled" on its face so that it may not thereafter get into the hands of a *bona fide* holder for value. Returned certificates should be pasted to the stubs from which they were detached. When a certificate is presented by an assignee it will contain, after the assignment, the signature of the previous owner. In order to identify the signatures of stockholders who may thus assign their stock and not appear in person to make the transfer, a card system of the signatures of stockholders in large corporations is sometimes kept by the secretary or transfer agent of the corporation. The certificates should be completely filled out, on issuance, with the name of the purchaser and the number of shares, etc., and should contain the signatures of the proper officers and the corporate seal. The stub should also be completely filled, and the one who receives the stock certificate should receipt for it on the stub. These are precautionary measures, since it is not absolutely necessary that a stockholder have a certificate to be entitled to vote and receive dividends. But on account of the liabilities to which a corporation may be subjected through carelessness or fraud, these matters should be carefully attended to. They are part of the duties of the secretary. When a certificate is lost or destroyed, and the corporation is called upon to issue a new one in its stead, the fact that the new certificate is issued in place of the old one which was lost or destroyed should be written on the face of the new. But bebefore issuing a new certificate there should be fairly reasonable assurance that the old will not turn up in the hands of a good faith purchaser for value, and the corporation should require an indemnity bond to be given by the person by whom the new certificate is owned, protecting the corporation from loss in case the old certificate appears in the hands of a *bona fide* purchaser. Lost certificates that have been assigned in blank are particularly dangerous. A lost certificate should be advertised for at intervals for several weeks; this may cause its return or prevent a dishonest holder from selling it. It is always best, when a certificate is lost and a new one is demanded, that the issuing officer get authority from the directors to issue the new certificate. Should the corporation suffer loss, the officer might otherwise be held responsible and liable for any loss. If the certificate lost represent a great value, it is sometimes advisable for the directors to refuse to issue a new certificate. The owner of the lost certificate will then take the matter to court, and the court will usually order a new certificate issued, which will relieve the corporation from liability. The rights of trustees and other third persons to make transfers, and of courts to order transfers, should be carefully investigated, else the corporation may be held liable for illegal transfers.

Certificates of stock are not negotiable instruments, though they are sometimes called quasi-negotiable. The law of negotiable instruments does not therefore apply to them. But the protection of the doctrine of estoppel has been thrown about them to such an extent that the good faith purchaser of stock is as safe under almost all circumstances as if he had purchased a promissory note. This is especially true where, through the negligence of an owner, a certificate with an assignment in blank has come into the hands of a good faith purchaser for value who has had no notice of the loss or theft. Here the first owner is estopped from asserting his rights. A stockholder is required to exercise reasonable care that his certificates are protected from loss or theft, and, if they are lost or stolen without neglect on his part, the general rule of law will apply that his right is superior to that of any other person who may have acquired the certificates for value in good faith.

§ 62. BONDS.

Bonds are variously classified, according to their security, purpose, the contracts of payment, redemption, etc. The security of the bond will be mentioned in the wording of the bond. It may be either a personal contract or a lien on property, or both. A corporation may issue with or without specific security, a bond which is indorsed or guaranteed by another corporation, and the indorsement or guarantee has the same effect as the indorsement or guarantee on a note. Such bonds are known as "guaranteed" or "indorsed" bonds. Bonds, as well as notes, may be assigned without recourse, or the liability may be specifically limited. Personally secured bonds have as a resource for payment on execution, whatever property the making and indorsing or guaranteeing corporations have that is not given as lien security, or that remains after the specific liens are satisfied. It makes no difference whether the liens are given before or after the personally secured bonds are issued, the satisfaction of the liens must come first. Personally secured bonds are therefore not usually as safe an investment as lien bonds.

There are many kinds of bonds based on lien security. They usually bear the name of the kind of property against which the lien runs. The property is mortgaged, and the mortgage is usually executed to some disinterested party, such as a trust company or banking house, as trustee, which holds the security for the bond purchasers and administers it in case of necessity. Sometimes the mortgage is executed to one of the bondholders as trustee, for himself and all others interested. A reliable trust company, however, is safer and better as trustee.

A *general mortgage bond* has for security a mortgage on all the properties of a corporation.

A *real estate bond* has for security a mortgage on specific real estate, usually separated from the other property of the corporation issuing it. Railroad land grants from the government are often used in this manner by the railroads receiving them.

A *blanket mortgage bond* has for security all of several properties or parts of a property, on all or certain of which previous mortgages have been given. It is, therefore, more or less a secondary bond as to security.

When several independent corporate properties are consolidated, each having a bond issue outstanding against it, it may be desirable to raise funds to consolidate the debt against them as well as to provide means for financing the new corporation. A mortgage is then given against the consolidated properties, *consolidated mortgage bonds* are issued, the old bonds are paid and the surplus funds are used as the corporation requires.

Divisional bonds are a kind of railway bond, having as security the property of a division of a railway system. A "division" is a smaller road which has become part of a consolidated railway. Divisional bonds are bonds which have not been refunded into consolidated bonds.

The foregoing bonds have for security a mortgage on some form of real property. A bond issue may likewise be based on personal property. *Equipment bonds* are of this kind. In order to provide funds for the purchase of machinery or other equipment, a company requiring such will make arrangement with the manufacturer or other seller to take payment in bonds secured by a mortgage on the equipment purchased. These bonds are often underwritten and put on the general market. As they usually run for a short time and bear a good rate of interest they find a ready market.

The *collateral trust bond* is also based on personal property. It has for security stocks, other bonds, or mortgages deposited with a trustee, who holds a contract which provides for the sale of the securities in case of delinquency in payment of principal or interest. This kind of bond is the same as a collateral note.

The contract of trust or collateral security usually permits the maker to substitute securities of equal value for those deposited, if the trustee assents.

Another personal property bond is the *car-trust bond.* A car-trust is a business concern which buys cars from the manufacturer and leases them to a railroad. The railroad pays a certain periodical rent for a given time, after which it comes into absolute ownership of the cars. The car-trust company issues bonds whose security is the cars leased to the railroad, and whose payment depends upon the payments of rent by the road.

Debenture bonds are of several kinds. Debenture means debt, and has no special significance as applied to this kind of credit instrument. Those debentures issued by financial companies differ from those issued by railroads. The former are a kind of collateral trust obligation, bonds and mortgages owned by the company being deposited as security for payment of principal and interest. These debenture bonds are issued to obtain funds for the purchase of other bonds and mortgages, which in turn may be used as security for another debenture bond issue. Railroad debentures are a last lien on the property and income of a road, being junior to other mortgages, and indeed are often unsecured. Payment of interest depends on the surplus net earnings of the road. While financial company debentures are generally good investments, railroad debentures are often poor. They are, in fact, similar only in name.

The *income bond* has its principal secured by a mortgage on the property of the company issuing it, but its claim is junior to the claims of other mortgage bonds. The interest depends upon the surplus net earnings or income, whose amount is determined by the board of directors of the issuing concern.

An *assumed bond* is strictly an obligation of a subsidiary corporation, whose stock or property has been acquired and is possessed by the main company. In this bond the subsidiary corporation assumes the payment of principal and interest. These bonds are similar to a guaranteed bond and a divisional bond, and are sometimes spoken of by the latter name. A divisional bond, however, is usually a direct obligation of the main corporation. Sometimes the main corporation takes care of an assumed issue without being directly obligated to do so.

Improvement bonds, purchase-money bonds, and bonds having various other names are issued. Among other names that apply to various issues, some of the more common kinds are as follows:

A *participating bond* is a rather new kind which is entitled to participate in the profits of the corporation beyond the fixed rate of interest.

A *joint bond* is issued and assumed by two or more corporations. The Great Northern-Northern Pacific joint collateral trust fours, secured by deposit of C. B. & Q. railroad stock, are the joint obligation of the two controlling companies.

An *extended bond* is an issue which has matured, but by agreement with the owners has been extended for a further period instead of creating a new issue to succeed it.

A *refunding bond* is a bond issue created to pay and cancel a maturing issue of bonds, and to supply additional capital, and, further, usually, to reduce fixed charges.

A *prior lien bond* may or may not be a first security on the property of a corporation. It may be a junior issue merely prior to some other junior issue. For example, the Erie railroad prior lien fours are simply prior to the general lien fours, both being part of an issue of a first consolidated mortgage.

An *underlying bond* is a term used to express the precedence in security of one issue of bonds over another. It may or may not be a first mortgage bond.

The name a bond bears is not so important as the contract under which it is issued. It is seen that the name of a bond means nothing as to value or security. The careful investor will always study the contract, and the careful and honest corporation will always have framed such a contract as will bear investigation. The investment status of any bond depends upon the value and stability of the property it represents and the character of the corporation issuing it. There may exist at the same time different kinds of bonds with the same property as security. The intending bond purchaser should know all about the various obligations of the concern in which he may be financially interested. The Rock Island Railway Company, for instance, has some seventy bond issues on the system, of almost all degrees of value and security. "There are first mortgages of very inferior worth, and bonds not mortgages at all but yet of high standing," says Mr. Moody. "How easy it is, therefore, to err in passing upon bonds on this system unless a good deal of general fundamental knowledge is first acquired."

With reference to the kind of money in which bonds are payable, they are "gold" bonds, or "legal tender" bonds. The contract of payment in the former reads that they shall be payable "in gold coin of the United States, of present weight and fineness." This is the best guaranty of the stability of the money payment value of the bonds that can be made. Legal tender bonds are those payable in any kind of money that is legal tender for the payment of debts.

"Coupon" bonds are so called from the coupons, or separate interest notes which are attached to the bond certificate. When an instalment of interest becomes due, the coupon calling for it is "clipped" from the other coupons and is presented for payment in the same way as any other note. Coupon bonds and the coupons are payable to bearer. "Registered" bonds have the number of the bond, the amount, and the name and address of the owner, registered at the office of the issuing concern or at the office of a "fiscal," or financial agent, such as a trust company. The contract for the payment of interest is continued only in the wording of the principal obligation, and payment of interest is made by check to the registered holder. Registered bonds are not passed by delivery, but by transfer recorded in the books of the registrar by the registered holder. Doubt as to the question of ownership in case of theft, loss, fraud, etc., is minimized in the case of registered bonds. A bond may be issued so as to be either a registered or coupon bond, as in the case of the Minnesota, Saint Croix and Wisconsin Railroad Company's five per cent. income mortgage gold bond. The interest and transfer contract reads as follows: "This bond draws interest from the first day of May, A. D. 1885, until the same is paid, at the rate of five per centum per annum, payable at the office of said Company in the city of New York and State of New York, on the presentation and surrender of said coupons as they severally become due according to their tenor. It and each of its coupons shall, unless this bond is registered, pass by delivery; but if registered, then by transfer, recorded in the books of the company, by the registered holder. After registration of ownership is certified on this bond by said Company's Register, no transfer, except and until recorded in its books, shall be valid, unless the last previous transfer shall have been to bearer. This bond is subject to successive registrations and transfers to bearer at the option of its lawful owner; but after such registration and certification thereof on this bond, interest will be paid to the registered holder only upon a proper voucher therefor."

"Convertible" bonds are those in which it is optional with the holder at a certain time or under certain conditions to convert his bond into some other form of liability, i. e., into stock or some other kind of bond.

"Redeemable" bonds are those made payable, at the option of the issuing company, at a certain period or periods before the time of maturity. Thus, a fifty-year bond may be made payable at the option of the maker at a certain time in any year after thirty years have elapsed. The bondholder cannot make a demand for payment until the end of the fifty years, but the company, if it choose, may pay the bond any time after thirty years.

PART VI.

STOCKHOLDERS.

STOCKHOLDERS.

§ 63. Stockholders: Rights, Powers, Liabilities.
64. Stockholders' Meetings.

§ 63. STOCKHOLDERS.

The relations of stockholders to a corporation are contract relations. The stockholders contribute their funds, property, or services, and, in return therefor, they are entitled to share in the corporation's profits. The contract is between the corporate person, or corporation, and the stockholders. The fact that the stockholders have power to choose the directors does not alter their relations to the corporation, as this power is only a practical provision of the law for the selection of agents who are to represent the corporation and carry on its business.

The general rights and powers of stockholders are to meet at stockholders' meetings; to propose matters of corporate or business interest for consideration, and to discuss and vote on any matters submitted; to elect directors, officers and agents for the corporation; to participate in the profits of the business; to keep the corporate property and funds from being diverted from their original purpose; to inspect, personally or by attorney, the books and records of the corporation (this right is much modified by recent legislation and by judicial decisions); to act on any changes proposed to be made in the corporate purposes, or generally to amend the articles; to make, amend and repeal the by-laws; when the corporation increases its capital stock, to subscribe for new stock in proportion to the number of old shares held; if the corporation becomes insolvent, to have the corporate assets applied to the payment of the corporation's debts; to bring about a dissolution of the corporation; to share, on dissolution of the corporation, in any assets that are left after the debts are paid. Stockholders commonly have the right to have certificates of stock and to sell, assign, or transfer them at will. The power and rights of the stockholder depend upon the terms of the contract recited in the stock, there being restrictions and qualifications of rights in the special kinds of stocks such as preferred, guaranteed, etc. The specific rights of common and other stockholders will be gathered from what has been said in previous departments of this book. When a stockholder's rights are infringed he may sue at law or in equity, according to the facts in the case.

The general liabilities of stockholders are for unpaid subscriptions to stock, or for the balance on partly paid stock*; for dividends declared from the capital of the corporation; and sometimes, for debts due to employes. Certain contingencies govern the liabilities of stockholders and the statutes of the state under which the corporation is organized should be consulted to determine the liabilities. In California and Minnesota there are liabilities to twice the par value of the stock, the same as in national banks.

The exercise of corporate powers by stockholders is through the determination and registering of the will of the majority of the stockholders. "This is required to be done by appropriate means [vote or consent], at a meeting of the stockholders, called with prescribed formalities, and attended by such a number of them as the charter declares to be a quorum. The majority may express their consent that a specific act be done, or, after it is done, that it be held valid; or that consent may be implied from the appointment of general officers or agents, within the scope of whose powers and duties that act lies."*

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* For exceptions to the rule that the holders of shares not fully paid are liable to creditors in the difference between the amount paid and the par value of the shares, see Van Cott vs. Van Brunt, 82 N. Y. 535, where the payment of a corporation debt. in good faith, by the issue of stock. is upheld; Handley vs. Stutz, 139 U. S. 417 (an interesting and significant case), where is upheld the right to issue stock at less than par to save a going concern; Christensen vs. Eno, 106 N. Y. 97, where a person to whom shares have been issued as a gift is not held liable to creditors. Cook on Corporations says, citing Handley vs. Stutz, "And it is now established law that an embarrassed corporation may, upon an increase of its stock, put such stock upon the market and sell it for the best price that can be obtained, and that the corporation may throw in as a bonus a certain amount of full-paid stock to the purchaser of its bonds, and there will be no liability on the stock." Great care should be taken in pursuing a course of this kind that there are the proper constitutional or statutory conditions precedent to such action, and a corporation lawyer familiar with the cases on this subject should be consulted to approve or condemn the action.

A quorum at a stockholders' meeting is such a number of the shareholders of the corporation as is necessary to bring together the required amount of voting stock to transact business. Statutes, articles, or by-laws usually provide that the holders of a majority of all the issued shares shall constitute a quorum. Then by vote of a majority of a quorum, the corporate transactions are determined and the corporation is bound. The common-law rule is that those of the stockholders who actually assemble after proper notice constitute a quorum for the transaction of business, even though they are a minority of the whole number and represent only a minority of the stock. Statutes reading "a majority of the stockholders" mean a majority in interest rather than in number. It takes two persons to constitute a "meeting"; one person holding a majority of the stock cannot hold a meeting to which other stockholders are not invited, nor bind them or the corporation by his informal acts, though a person owning all the shares may bind his corporation by contracts made in its name.

It will be noted that stockholders, in their capacity of stockholders, have little to do with the active business affairs of the corporation. The basic authority is theirs, but after defining the powers of directors and officers and delegating authority to them, their influence and control are somewhat removed. The importance, then, of judiciously selecting directors, officers, and agents and of defining and properly limiting their powers by by-law is apparent.

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* Benjamin Trapnell, "The Logical Conception of a Corporation," in Clark on Corporations, p. 643.

§ 64. Stockholders' Meetings.

Stockholders' meetings are regular or special. The regular meeting for the election of directors, the hearing of reports, and the transaction of any proper business is held annually, and the time and place of meeting are usually provided by by-law. Generally, such meetings must be held in the state in which the corporation was created, but there are sometimes statutory provisions permitting the meetings to be held elsewhere. In all cases, however, the *first* meeting of stockholders should be held in the state of the corporation's creation; the first meeting is recognized as being held for the purpose of doing constituent acts, electing directors, adopting by-laws, etc.

Stockholders are entitled in law to due notice of all meetings, and, in case the number of days' notice is not provided by statute, it should be provided in the articles or by-laws. Special notice of the kinds of business to be transacted at a regular meeting is not necessary, but if there is any business of an unusual nature, any proposed radical changes of corporate or business concern, to come before the meeting, mention of them should be made in the notice. Notices, written or printed, should be sent to the stockholders ten or more days before the meeting, and in some states further notice is required by publication. The circular notice should be sent to the last-known postoffice address of each stockholder. Notice should never be given by publication alone, as it might be made the least sure way of reaching stockholders. If the by-laws provided only for this method of notification, publication might be made in a paper of limited circulation, where few would see it, and a body of stockholders, enough to constitute a quorum or to satisfy a statutory requirement, might legally pass measures which would otherwise be defeated. Notwithstanding what has been said of the regular officers serving at stockholders' meetings the fact of the law is that the stockholders have the right to elect any of their number chairman and secretary of their meetings, unless otherwise provided by statute, articles or by-laws. When the question of specially approving or censuring any of the acts of directors or officers is to come up, the better plan is to elect a chairman and secretary other than those of the officers who would otherwise serve. It is customary for the president to call the meeting to order, and also for him to preside in the regular course of business. If such contingency as was mentioned arises, the stockholders may elect a vice-chairman to serve during the consideration of such questions if the articles do not specify that the president or vice-president shall preside. If such provision is made by by-law, the by-law may be suspended. Where no provision is made in the articles or by-laws as to who shall serve as chairman and secretary of stockholders' meetings, such positions are filled by election at each meeting. And if those are absent who would, according to provision, fill the positions, then the stockholders elect a temporary chairman, or vice-chairman, and a temporary secretary. By-law provision is often made for the succession of presiding officers, viz., president, vice-president, treasurer and vice-chairman. The secretary, if present, is thus left to perform his proper duties.

A convenient order of business may be provided by by-law, but it should be made directory and not mandatory. The following is suggested for the regular annual meeting: (1) Selection of chairman and secretary; (2) proof of notice of meeting; (3) calling of the roll; (4) reading and disposal of previously unapproved minutes; (5) reports of officers and committees; (6) election of directors; (7) unfinished business; (8) new business; (9) adjournment. The secretary should have the transfer book, or stock record book at the stockholders' meetings, so as to be able to determine who has the right to vote, should any question occur. The right belongs to stockholders of record, and the by-laws should so specify. Common stockholders will, of course, have a vote for each share of stock, and preferred shareholders will have the same right unless it has been provided that the preferred stock shall be non-voting. The bondholders may be permitted to vote, if the corporation has been organized under the laws of Delaware or Nevada and provision is made therefor. Voting will be conducted according to the by-laws or rules of order adopted. The election of directors, which occurs at the regular annual meeting, should be by ballot. In the larger corporations two or three inspectors are usually appointed by the president to conduct the election. It is better that they be elected by the stockholders, however. In some states they are required by law. They take oath that they will conduct the election impartially and faithfully, receive and count ballots and make a formal signed testimony, with personal seal affixed, of the results of the election. If desired, the inspectors' certificate or report of election may be sworn to by them before a notary. The secretary will have charge of certificates of election, and will file them with other important papers of the corporation. In some states cumulative voting is permitted, whereby a minority of stockholders may concentrate their votes on one or more directors and thus secure representation on the board. This is about the only protection offered minority stockholders under the laws of any state. Cumulative voting permits each stockholder to multiply the number of shares he holds by the number of directors to be elected, and to distribute these votes among all of the several directors to be voted for, or to cast them all for one or two or any number less than the whole number to be voted for. When a shareholder cannot be present at a meeting he has the right to be represented by proxy; that is, he delivers to an agent or attorney a written, signed, and witnessed power of attorney, which is evidence that such agent or attorney may represent the shareholder according to the terms of the instrument. In order to better insure a quorum at an important meeting blank proxies are sometimes included in the envelope with the notice of the meeting. A proxy may be revoked at any time by the maker, and where they are not limited by statute they may be issued to cover any period of time or any particular meetings. Proxies expire with their time limit or with the adjournment (*sine die*) of the meeting for which they were issued; but they hold over for an adjourned (postponed) meeting, when given for the meeting of which it is a part. Proxies may be made in the name of any person whom the maker desires to represent him. Proxies are frequently signed and witnessed without including the name of the proxy (the agent or attorney), and are thus sent to the secretary in blank.

At the meeting the secretary fills in the name of any person present. This insures representation by a proxy. When proxies attend a meeting they present their credentials to the secretary and vote in all respects as original shareholders.

Special meetings of stockholders are called for particular and usually pressing purposes. The place, time and all the purposes of such meetings must be given in the notice. Notice should be given a reasonable length of time previous to the meeting, as is specified usually in the by-laws, and no meeting can legally be held without such proper notice, unless all the stockholders sign a waiver of notice or, by their presence and participation in the meeting, imply such a waiver. Provision is made in the by-laws for the calling of special meetings, either by the president, the directors, or a certain fraction of the stockholders. The "call" for a special meeting is given to the secretary, who notifies the stockholders.

PART VII.

CORPORATE BOOKKEEPING, AUDITING AND ACCOUNTING.

CORPORATE BOOKKEEPING, AUDITING AND ACCOUNTING.

§ 65. Corporation Bookkeeping, Auditing and Accounting.
66. A Corporation's Books.
67. The Minute Book.
68. The Stockholders' Ledger.
69. The Book of Stock Certificates.
70. The Transfer Book.
71. The Dividend Book.
72. The Subscription Book.
73. The Instalment and Instalment Scrip Books.
74. The Corporation Calendar.
75. Books Required By Law.

§ 65. CORPORATION BOOKKEEPING, AUDITING AND ACCOUNTING.

Connected with the office of every large and intricate business there are clerks and bookkeepers, and usually an auditor and accountant in one person. The work of these several kinds of employes differs greatly. As an expert government accountant puts it: "While it is true they all deal with figures, there is as much difference in the character of work performed by one, compared with that done by another, as there is between the light of an electric lamp and that of a candle. The accountant is the electric light of the world where figures are involved, while the clerk for the time being must content himself to be the candle."

The clerk is usually a mere scribe or copyist, transcribing into books whatever is given him to copy therein, frequently knowing little or nothing of the relevancy of the entries he makes. His work of recording transactions is largely automatic, and he needs no special knowledge of bookkeeping to fit him for his work. His qualifications are accuracy in transcribing and a clear, distinct, legible handwriting.

The bookkeeper is one of the most important employes of any business corporation. Upon him the directors and business manager rely for information as to the financial status of the corporation and data as to the business done. A competent bookkeeper for a large corporation must have knowledge and experience beyond the affairs of ordinary business. A mere graduate of a "business college," who is without experience and business insight, will not do. It requires more ability and knowledge to be a bookkeeper than to be a clerk, a fact many business men have learned after sustaining financial losses that were caused by wrong bookkeeping. The first qualifications of a competent bookkeeper are a thorough knowledge of double entry bookkeeping and of the business whose transactions he is recording on the books. Whatever additional knowledge he may have of business and financial practices, the better fitted he will be for his position.

A step in advance of the bookkeeper is the auditor. There should be no real difference in the qualifications of a competent bookkeeper and an auditor, and their functions differ only from the standpoint from which they are performed. As a rule, auditors are more advanced in bookkeeping methods and in knowledge of business and financial law and practices than ordinary bookkeepers. They are really advanced bookkeepers. But whereas the bookkeeper's business is to keep a daily routine account of the business done, a statistical account of the corporation's transactions, the auditor's work is to review the work of the bookkeeper, to inspect it to see that it is correct. The auditor examines the books and accounts to discern their correctness; compares charges with vouchers; examines parties and witnesses; allows or rejects charges; states whether expenditures made for conducting business, for additions to the plant, etc., have been charged to the proper accounts; and, in reporting, states how nearly the books correspond with the facts. His presentation of the facts will constitute a verification of the bookkeeper's statement, or will be a revision of it. The courts frequently refer to auditors for adjustment of accounts involved in litigation, and, in some jurisdictions, their reports are final as to facts unless vitiated by fraud or gross error. In large and intricate businesses where there are a number of bookkeepers, or departments between which pass funds or materials and vouchers therefor, an auditor is usually employed to keep straight and verify the work of bookkeepers and department heads. When a business is so small or simple that it is not worth while to keep an auditor constantly employed, and where an occasional audit is desirable, an auditor from an audit company, which has competent men for this very purpose, may be employed periodically, say once in six months or a year, to go over the books and accounts of the company.

The accountant is a degree higher than the auditor and must possess all the qualifications that the auditor possesses, and he *must* know also the general principles of commerce and finance and the detailed conduct of the businesses with which he is engaged and their relation to other businesses. His work covers a broad and diversified field, and no business or financial knowledge he possesses will be superfluous. His work differs from that of the auditor as does the work of a surgeon from that of a physician. His characteristic work is dissection, analysis, while the distinctive employment of the auditor is inspection and classification. An accountant may go considerably beyond the general books of a company. Beyond the statistical books of the company's transactions, which are kept by the bookkeeper, he prepares books statistical of business facts which are valuable and necessary to be known. He estimates the cost of production to the minutest detail, and figures all the sources of profit and loss, discovering leaks the books do not show, and suggesting improvement in conduct of business. His work meets that of the general manager. He is the head bookkeeper and auditor and the business statistician upon whom the manager relies for much of his assistance. He is a discoverer of business facts and the ultimate judge of the significance of business facts. Expert accountants have been frequently employed as business managers, and, when the managing heads of large corporations die, the accountants often succeed to those positions, as, in the larger companies, often do also the corporation counsels.

In most corporations the functions of auditor and accountant are performed by one person. There are all degrees of competence among auditors and accountants, and, before employing either, a corporation should demand that the person it employs shall show a certificate of competency from a reliable university, college or school of audit and accounting or from a state which gives the degree of C. P. A. (certified public accountant) after state examination. As the value to commercial and public interests of honest, competent, independent auditing and accounting has come to be recognized, a few of the states have passed laws regulating the practice of the profession to the extent of enabling competent accountants to distinguish themselves from the incompetent ones. New York, Illinois and some other states prohibit an accountant from using the title C. P. A. unless he has passed an examination held under state supervision (under the supervision of the state universities in the states mentioned). The examinations cover the theory of accounts, practical accounting, auditing and commercial law. There are usually preliminary requirements, also, as, for instance, in New York, where the applicant for the full degree must be at least twenty-five years of age, of good moral character, and must have had sufficient preparatory education, and three years' satisfactory experience in the practice of accounting, one of which was in the office of an expert public accountant. Any accountant having a certificate from a state having such laws is likely to be competent to undertake any work in his line, but the accountants' acts generally have an exemption clause. This clause permits accountants who have been practicing in the respective states on their own account for more than a year before the passage of the act to have the degree of C. P. A. generally without examination. So, in employing a C. P. A. it may be worth while to inquire whether he received his degree by examination or by exemption, and, if by the latter, to try to determine his ability, or other firms' estimate of his ability, by asking a list of large commercial or financial concerns whose accounts he has audited. Any of these concerns may be called on for a confidential opinion as to the satisfactoriness of the accountant's services. If an accountant is ever proved to be guilty of being bribed or of other fraudulent or unprofessional conduct, his degree of C. P. A. may be revoked. All the states should have certified public accountants' acts. For an independent audit, no person interested in the corporation, directly or indirectly, should be employed. The corporation should at all times beware of the bookkeeper out of a job who is professing to be an expert accountant. It should also beware of the man who "swells up" and puts bookkeepers and office employes out of countenance with him. Since the work of expert accountancy has some detective features, it is usually necessary that the accountant be amiable and that he acquire confidential relations with those whose work he is inspecting.

To prevent collusion between the manager and bookkeeper for the purpose of committing a fraud on the corporation a board of directors often will employ an auditor. Also, the auditor is frequently the direct representative of stockholders who want to be sure their corporation is conducted accurately and honestly. Keister's Corporation Accounting and Auditing says: "One of the most unpleasant situations in which an auditor can be placed is when he is compelled to notify the stockholders that the company is not in a prosperous condition, and that the books are inaccurate, etc. Should he find the books to be carelessly and inaccurately kept, and false statements prepared for the stockholders, then he must positively refuse to give his certificate [of sound condition]. Usually an auditor has very little trouble to induce the directors to write off a sufficient amount for depreciation when the company is prosperous, but when a period of depression in trade arrives the directors will, without any intention of acting dishonorably, present a statement showing a profit equal to those of former years, while in reality it is considerably less. If the directors refuse to amend the accounts * * * the auditor should prepare for the stockholders a full report of the accounts, setting forth clearly therein the points at issue between the directors and himself, and sign the accounts subject to such report." The auditor "should not allow himself to be influenced by the directors' arguments, when he is confident his ideas would, if carried out, be a benefit to all concerned. Directors are usually men of ability, integrity and honor, and when such is the case an auditor will find his duties easy and pleasant to perform. Every facility will be afforded him, questions will be promptly and correctly answered; he will have ready access to all books, securities and documents; any suggestions he may offer as to systematizing their methods of account will be adopted, if proved to be advantageous. If bookkeepers or directors have neglected their duties, performed fraudulent operations, or have purposely prepared false statements and accounts to submit to the stockholders, the auditor will then find every possible obstacle thrown in his way to prevent his discovering and exposing their deceptions. When such is the case, the auditor has a very responsible, difficult and unpleasant task before him. However, he should not allow himself to be nettled, tired out, or hurried into certifying accounts until he has required all questions to be answered, and each doubtful item explained to his entire satisfaction. If directors or bookkeepers refuse to answer or explain, the auditor, if he be firm, would refuse to give his certificate, which would place the directors or bookkeepers in an embarrassing position, if they should attempt to appear before the stockholders without it. An auditor should be able not only to audit and verify the books and accounts of a company, but also, if he finds the books are carelessly kept, or if the system upon which they are conducted is cumbersome or such as to require unnecessary labor or time, he should be able to suggest a better method, the adoption of which will probably ensure greater accuracy. The books of many companies are very loosely and unsystematically kept by low-grade, careless and incompetent bookkeepers, whereas if competent, careful help were to be employed, a great deal of unnecessary work might be concentrated into fewer books, or perhaps even be dispensed with altogether. The directors are managers of the company in behalf of the stockholders, to whom they are responsible, and it is important that, in his anxiety to do his duty towards the stockholders, the auditor should be careful not to interfere in the management of the company by insisting on the adoption of any of his propositions as to the system of bookkeeping or other matters. He should endeavor to introduce his improvements by friendly, courteous suggestions, and by putting them forward gradually." "The auditor, before entering upon the duties of his first audit of a company's accounts, would find it greatly to his advantage to secure a complete list of all the books kept, both financial and statistical, with all financial statements, balance sheets, vouchers, and everything connected therewith. He should also obtain a copy of the original prospectus if the company be a new one, also a copy of the charter, articles of agreement and by-laws. A careful examination of these books and documents, together with what explanations he may deem advisable to ask of the officers and bookkeepers regarding the nature of the business and the system of conducting their accounts, will better prepare him to proceed with his audit.

"To enable an auditor to certify to the accuracy of the books and accounts examined, and to make an audit effectual, he should seek to detect and guard against errors of three kinds, namely: (1) Errors of principle, such as are apt to be made by those not proficient in the science of accounts; (2) errors of omission, those items which have accidentally been omitted either on the debit or credit side; (3) errors of fraud, entries intentionally made to defraud and embezzle. The professional accountant and auditor is the servant of the public, and just what the public wants he will be willing to give. If a complete audit of the accounts of a corporation is called for, then the auditor will examine critically each item to detect all errors. But if it is desired only to know what the earnings of the company have been, he will supply merely this information. When an auditor is called upon to make a special examination upon some particular point it is not reasonable to suppose that he will examine or certify to anything but the point in question."

The higher work of auditing and accounting (there is no hard and fast line between the two) is intimately connected with the practices of corporate finance. Thomas L. Greene, in his interesting and instructive book called Corporation Finance, writes as follows on corporation accounting. A careful study of the statement analysis contained herein will be especially beneficial. (This is reprinted here by special permission of the publishers, G. P. Putnams' Sons, New York and London.)

"Evolution in accounting is to be expected the same as in the methods of conducting business. As the transactions become numerous and increase in complexity, a corresponding change in the style of keeping the books is demanded. The principles of bookkeeping are simple, and the various kinds of entries are easy of general comprehension. The practical difficulty lies in making the book set forth the real facts, for it is in judging of the true meaning of those facts that the statistician's art consists, the process of recording the figures, once the facts are agreed upon, being comparatively easy. Moreover, the truth is many-sided; a business optimist will see things favorably and make up his figures accordingly, while an ultra-conservative merchant will seek to have the position of his affairs set forth in the most unfavorable light. There is the more excuse for optimism in corporation matters, for corporations live on, and, having more extended credit, often live down losses which would wreck partnerships; thus it sometimes happens that for his own reputation's sake and because of that good credit, the manager of a large corporation will give to his statements the brightest colors that the circumstances permit. For these reasons criticisms upon corporation reports are so often unfavorable, not because of malice on the part of the critic so much as of abounding optimism on the part of the usual corporation manager. The excuse for such optimism should fairly be taken into account: that there is no hard-and-fast line between fact and credit; that many a railway (for illustration) is helped over a bad place by its credit, and helped safely, whereas if the exact truth were known, that credit might be destroyed and with it perhaps the whole capitalization. A little unwilling forbearance on the part of creditors may bring everything around right and cause no loss.

"Every corporation must adopt such forms of accounts as suit its particular business. They should embrace such a number of separate books as will enable the management to know exactly what is being done in every department and in every detail and at what cost. The collection of statistics costs money, but modern experience is showing that only by accurate statistical knowledge can modern business be successfully carried on. There are good systems containing elaborate provisions for ascertaining the various costs in manufacturing. A corporation should be more, rather than less, exact than a firm. The sources of profit down to the minutest detail should be carefully inquired into; in no other way can the manager know which class of work to encourage, or which to study with a view of improving the process of production.

"In large companies the main account is that of the general balance-sheet, in which are regularly stated the other accounts, such as surplus income, or profit and loss. Thus the balance-sheet reflects merely the changes in the general condition during the year, not the amount of profit. This table or statement is the one upon which the lender of money or the investor should bestow his careful scrutiny, because on the interpretation of the items depends one's judgment as to the solvency of the company. The income table is simply an account of earnings and expenses in totals, together with the proper deductions from the net revenue for the year. Accompanying the income account should be tables explaining in full detail the items there given in gross. There may be a difference of opinion between the management and the bond- or shareholders as to the proper disposal of certain items of expenditure made during the year. There may be a legitimate question whether such items are properly chargeable to income or not; such questions are not only theoretical but very practical, because on their answer often depends whether a dividend is paid or not. For such reasons the report which every corporation ought to make to its shareholders and the public (if the public holds the shares) should contain statements in sufficient detail of every transaction during the year, whether included in the income account or not, in order that every one may form his own judgment on the wisdom of the management and the safety of his investment.

"In cases where the charging of items of expenditure to the income account may be doubtful policy, or where, from the nature of the case, it is difficult to decide such questions, since the answer may depend upon one's opinions as to the business prospects for the future, the profit and loss account may be credited annually with all the surplus earnings of the corporation over and above fixed charges and dividends, or fixed charges only, leaving dividends for the profit and loss table. Against these surpluses may be charged from time to time the cost of unproductive improvements; the deficits of subsidiary companies, which for the time must be met from the revenues of the owning corporation; sums which have been included in the earnings of previous years and which have now proved uncollectible, and in general all items which, in the judgment of the management, should not be deducted from the income of the year, but which good financiering requires should be treated in the accounts in some way as debits, even if temporarily, in order that no inflation in the assets may occur. Such a profit and loss account, if carefully and fully kept, will prove a better test of the earning capacity of the company than the income account, which shows the profits in any one year, for the reason that the former table gives an average of results extending over a number of years.

"One of the perplexing things in the financial management of a large manufacturing or trading company is the treatment of the expenditures for the care of the plant. A depreciation account in some shape must be kept by every company or firm in business. The real estate may decline in value, and in any case, in any progressing concern, money will be required to be spent each year to adjust the buildings more perfectly to the requirements of the business, and yet these adjustments may not add anything to the salable value of the property, and should not, therefore, be added in the accounts to the company's investment in real estate. In like manner machinery will wear out, and is always subject to the danger of new inventions, which may render the old machinery practically worthless. It is not easy to foresee when a new outfit will be in part or in whole required, though experience soon places a limit to the number of years in which a given set of machinery may be useful. The proper course in these cases is always the conservative one. The corporation should estimate the probabilities of depreciation always against itself, and set aside yearly such sums from its profits as will suffice to renew so much of the plant as may be expected to wear out or to become useless in a given time. Unless this depreciation fund is carefully thought out and its separation from profits rigidly insisted upon the shareholders of the corporation, and perhaps the bondholders, may in the course of years find that their securities cover a property of little or no business value. If certain sums are not set aside to meet this depreciation, and if for this reason dividends are paid larger than would otherwise be the case, to the extent to which this is carried the returns received by the shareholders are not dividends, but their capital returned to them in piecemeal. These depreciation sums should be real and not merely bookkeeping liabilities of the company to itself.

"Modern corporation accounting requires that in theory a sharp line of distinction should be drawn between outlays which may be considered a part of the regular working expenses and those which are chargeable to an increased investment in the business. In theory the former should be deducted from the gross earnings before the net revenue is determined, while the latter may be met by an increased issue of bonds or shares. There is no doubt of the correctness of this principle in general, but in its practical application it is subject to great modification. English shareholders in American corporations usually insist upon such a system of accounting as divides the expenditures strictly according to this rule; and such indeed is the general practice in Great Britain. By charging to capital every item, small and large, which could by any possibility be construed to be a betterment, the British railways have increased their capitalization until they are dependent for a continuance of interest payments on good traffics year by year. Thus far no harm has come to these railways from this policy, because the fluctuations in the volume of their traffics have been comparatively slight.

"But in the United States more caution must be observed in this matter. From the very nature of the case, business of all kinds in a developing country must be more subject to changes in profitableness than in older countries. The very character of the American people, energetic and progressive, makes business all the more liable to such fluctuations. Bad years follow good years in every line of American industry, although differences are less violent in those trades which are the longest established and among those companies which have been in operation long enough to render their business comparatively stable. The principle, therefore, of charging all so-called betterments to capital and meeting the cost from the sale of bonds or shares, requires modification according to the circumstances of each particular company. The more fluctuating the volume of business has been or is likely to be the more important is it that in one form or another a part of the profits in prosperous years should be withheld from the shareholders and put into the property or set aside for its renewal. To those who wish a working principle to distinguish the proper items to be charged to capital account in the actual management of American corporations, railway and other, the following definition is suggested: No additions to the property, either to the real estate or to the machinery (if a manufacturing company), should be considered betterments and charged to capital, unless they increase the productivity or earning capacity of the plant. Under this rule the purchase of additional equipment for a railway would be an expenditure which could conservatively be met by the issue of bonds or equipment notes, because such purchases would enable a larger volume of traffic to be handled; on the other hand, the replacement of a wooden bridge by an iron one would not be a proper charge to capital, under our definition, unless it was one of a series of expenditures deliberately resolved upon in order that heavier trains could be run and a larger volume of traffic handled, thus increasing the revenues of the company, an increase which our theory demands should be clearly seen to be possible after the various amounts of capital set aside for this purpose had been spent. The same rule might be applied to corporations other than railways; the safe course is to charge against revenues (possibly through the profit-and-loss account) the cost of all additions to the property which do not increase the output or decrease the cost of production. Yet any rule or any principle in so delicate a matter can properly be applied in each case only after a careful study of all the circumstances, including the business of past years and the prospect for the future. With railroad laws in nearly every state permitting unrestricted building, American railroads are constantly liable to attack by competing lines projected for legitimate or speculative purposes. In England companies are not chartered unless a public necessity for the proposed line is shown. In the United States the only safe course for the old roads is to make themselves strong by using a part of their earnings for betterments, thus keeping down the capital accounts. The Pennsylvania Railroad has pursued this policy for forty years, having in that time, according to its reports, paid eighty millions of dollars for betterments out of profits. The foreign shareholders have frequently complained of this policy, though experience has shown it to be an essential element in the present strength of that company.

"On railways the working officers prefer to have included in the operating expenses only such sums as may rightly be grouped under that title. This is a proper request on the part of the superintendents, because they naturally wish that their administration of the affairs of the company should be shown to be conservative and careful. There is another reason also for keeping operating expenses distinct, in that it enables the managers to compare the same items of expenses year by year. If these items are varied by the inclusion or exclusion at times of sums whose proper accountings may be in doubt, the comparison of costs from year to year is vitiated and a valuable test of the efficiency of the operating officers is lost.

"To meet this requirement certain corporations deduct the costs of such betterments as one item from the net revenue often in the income statement. The objection to this course lies in the fact that the sums thus expended are lost sight of, and to the extent to which those items are hidden, the real amount of money spent upon the plant is understated. This is not a mere bookkeeping objection. The railways have found that the real cost of their property is a factor in dealing with legislatures. Laws may be passed in order to reduce freight rates and passenger fares to a point which shall yield the companies a return 'on cost.' The same point may arise at any moment with companies other than railways. Every corporation should therefore so keep its accounts as to show the amounts expended to improve the plant year after year from earnings. A common custom is to apply the annual surplus directly to the construction charges for the year, bonds being issued for the amount of the capital account after thus deducting the surplus. That custom practically adds the surpluses spent for betterments to the capitalization; yet it is a question whether it would not be better to open a comprehensive profit-and-loss account, in which the cost of betterments, as well as other indirect but necessary expenditures, could be included.

"Corporations small in capitalization, but public in their nature and in their stock holdings, often conduct businesses which do not require an elaborate system of accounting. Such companies are often managed by men who are themselves large owners in the property and at the same time skilled in that particular trade. Such men, for their own use or for that of the few other shareholders, need only the simplest statements of the business. It is customary in these small companies to unite the general balance-sheet with the income account, and in their cases this custom leaves no difficulty. On the one side are stated the items of cost of property, the valuation of the tools and machinery, the cash in the bank, perhaps the amount of interest charges and dividends paid during the year, and the working expenses. On the other side of the account, the revenues of the year, the bonded debt and the current debt. Such simple statements are well enough for those who understand the business thoroughly, while the changes in the items from year to year allow of the working out of the various principles which have just been discussed but about which no such sharp distinction need be drawn, as in the case of large manufacturing companies. The original cost of the property can be written off from time to time by adding to the cash on hand a yearly sum before dividing profits; a method of keeping a depreciation account which meets the peculiar requirements of such companies as have only a limited existence, such, for instance, as those which operate a mine where the amount of coal or ore can be estimated within reasonable limits. This sum of money in the bank is then applicable to the extinguishment of the bonded or share capital at the proper time, or may be used for heavy improvement to the property if such should be decided upon. Small corporations which have been formed for family reasons, and whose shares are held by the former partners and not sold to the public, require no special discussion. Their affairs are managed very much the same as under the former partnership.

"The formation and increasing numbers of corporations whose shares are held by the public, and whose business is trading, have led to a more rigid system of estimating mercantile credits and of inspecting the items upon which that credit is based. The evolution of corporation (or partnership) credit is one which must work for the good of all concerned. Such companies yield increasing opportunities for the investment of small sums, and while thus gathering together the little rivulets of capital their managers should themselves be under a moral responsibility to take all the more care of other people's money. It is well, therefore, that the affairs of trading companies should be subjected to such analysis as will indicate their solvency. Preparing statements that will stand examination is one of the best tests to which corporation managers submit as tending to bring the real position clearly before their own eyes and making them conservative in conducting the business and in estimating profits for the shareholders. Following this thought further, below will be found the statement of a non-existing trading company, whose assets and liabilities may be commented upon without reserve. The figures chosen for the purpose are intentionally doubtful and do not, of course, reflect the real position of our small corporations. They have been compiled in this form arbitrarily and for the sake of comment.

"The Blank Trading Company, we will suppose, was incorporated for the purpose of importing and selling fancy goods. The statement below is assumed to have been made December 31 and the inventory to have been taken on the same day. The head office is in New York City, with branches in Boston and Chicago. The president of the company is interested in a retail store in Chicago, to whom the company sells goods. The statement of assets and liabilities of the company is as follows:

THE BLANK TRADING COMPANY.

ASSETS.

A.	Cash on hand	$600
B.	Cash in consolidated and other banks	4,000
C.	Bills receivable (due from customers)	7,000
D.	Bills receivable (due from branches)	10,000
E.	Accounts receivable (due from customers)	63,000
G.	Merchandise (valued at cost)	170,000
H.	Real estate	27,000
J.	Machinery and fixtures	800
K.	Merchandise in bonded warehouses	37,600
	Total	$320,000

LIABILITIES.

P.	Capital stock (preferred)	$50,000
	Capital stock (common)	50,000
Q.	Bills payable for merchandise	47,000
R.	Bills payable to banks	15,000
S.	Bills payable for commercial notes sold	10,000
T.	Open accounts	109,000
V.	Deposits of employes	4,500
X.	Profit and loss	34,000
	Total	$320,000

"Some additional facts are assumed. A portion of the merchandise in warehouses is subject to 'trust receipts.' There is a contingent liability (not shown in the statement) of $20,000 for indorsed bills receivable outstanding. About $12,000 of accounts and bills receivable is acknowledged to be past due. Sales the preceding year amounted to $350,000. Expenses of conducting the business were $60,000, and dividends of 8 per cent. upon preferred and 12 per cent. upon common shares calling for $10,000, were paid during the year.

"First as to the items of the statement. Item A, cash on hand, needs no particular comment. It represents actual money in the hands of the company. In a few instances where deliberate fraud was intended this item has been manipulated. Sometimes the words 'and cash items' have been added, so that uncollectible bills or things of that character could, by a stretch of language, be included. In one instance, where a payment was soon to be made to creditors, a sum of money was borrowed from the bank and called 'on hand,' though the bank by understanding did not allow the cash to go from its possession, retaining it at interest over statement day. But such cases are rare. 'Cash' has a recognized meaning and is correctly accounted for by the vast majority of companies and firms. Item B, cash in bank, also means what it says, being funds of the company on deposit and subject to check; as our company is a reputable one, there is nothing to cause doubt as to these items of cash, A and B.

"Item C, customers' bills receivable, is a small one. If it is necessary to examine into it closely, one ought to know something about the customers whose bills are held and the character of the obligation. Business methods have changed in recent years. It was at one time the general custom to settle all accounts by giving bills. Now, with the exception of a few trades, it is customary to keep running accounts, so that the jobber does not have his customers' due bills as evidences of money owing to him as much as formerly. Of course, an obligation signed by two known firms, though one be small, is better than single-name paper; but such paper is no longer obtainable in quantities. In the present case the item is considered a good asset.

"Item D, covering bills receivable due from branches, must be thrown out. Since the branches are parts of the main house their obligations are also obligations of the main house, and cannot in any way be called assets. The confusion sometimes brought into the matter of the relations between parent houses and their branches, or between the home office of a corporation and its subsidiary offices, is cleared up when we remember that for the general purpose of estimating upon the financial value of shares and bonds the branches and the head office constitute but one concern. If juggling with figures or technical bookkeeping operations is indulged in it is usually done to conceal annual losses or depreciation or else to make the reported condition seem better than the reality. In small trading companies the matter is usually more simple. Instances have been known where the head office, ignoring the real position of its branches, has asked for bills payable to cover only the bookkeeping debts due to the parent company. These bills in the names of the branch were indorsed by the manager and discounted at the bank, the proceeds, of course, making a surprisingly excellent showing in the annual statement. The indorsed bills were not included among the liabilities, because not considered 'direct' obligations. Of course, the exhibit thus made was not a correct statement of the company's real condition. Many trading firms and corporations habitually exclude from their public announcement all indirect obligations of indorsement on the ground that they become a proper charge only when not paid by the maker. This is true so far as the sheet itself is concerned, but the shareholder or bondholder who wishes to learn all the facts should know by a separate statement how large these indirect indorsed obligations are. If out of proportion, it then becomes important to inquire why they exist, and how far the makers are financially responsible. The matter of indirect debts, which may become direct, is one which should have careful consideration in all corporation management. A manager willing to take advantage of bookkeeping technicalities may not speak of contracts which he has made for the purchase of supplies or machinery because dated ahead, and therefore not yet direct obligations; but all such prospective debts must be known if a clear view of the future is desired. The Blank Trading Company acknowledge that they have a contingent liability amounting to $20,000.

"Item E, accounts of customers, is a most important one in trading company's statement, and one equally hard to value. Book accounts and merchandise are the main assets of firms and corporations doing a trading business. If, upon investigation, it is found that these two items can be considered really good assets, the company is justified in expecting credit. The first question to ask concerning accounts receivable is: Are they in proportion to the amount of business done and not in excess of the proportion of the same item among other houses in the same trade? In some trades these book accounts run fairly uniform throughout the year. In others they vary so as to show large amounts at one season with small sums at another; in the latter case one may judge of the item partly by the date of the statement. In the particular line of trade which has been chosen for our illustration the amount of accounts receivable on the last day of the calendar year ought to be quite small, increasing in amount from the first of the year until the conditions are reversed by spring or early summer. Perhaps 10 per cent. of the gross aggregate sales would be a fair proportion to expect for this item in the statement under our assumed conditions. It will be noticed that this item is, therefore, about twice what it ought to be. This fact of itself furnishes a reason for further investigation. It is, of course, possible that these accounts are all good—possible, but not probable. One might inquire how much of these book accounts is overdue and is carried along by the company. If the proportion of overdue accounts in this item is at all heavy, it is an indication either that goods have been too freely sold to irresponsible parties on credit, or else that some misfortune, such as the loss of a staple crop, has fallen upon a certain section of the community in which a large quantity of The Blank Company's goods have been sold, a possibility always to be borne in mind when inquiring whether the credit risks are scattered or practically confined to one or two sections of the country; to be sure not to be caught by any technical differences one should ask how many of these accounts have been extended when due, which, of course, is another way of carrying them. If the company will make up a statement of the customers who are indebted one may obtain their rating from a mercantile agency and see what the proportion is between their capital as thus reported and the obligations in question. If a large part of these obligations figure out to be more than 25 per cent. of the capital of these customers, one may distrust the value of their accounts. In the present case it is stated that the president of the company is interested in a retail store to which the company sells goods. Technically we may expect that the company would not consider the account of this retail store as overdue, and yet it is possible that the swelling of this item beyond the limits customary in that particular line of trade may be owing to the credits granted to this particular store. Perhaps it is found that suspicions are in part confirmed, and that the excess of book accounts over the normal amount is really dead wood carried by the company. One, therefore, in his estimate of values, may put down this item at about $30,000.

"Item G, merchandise. It is so easy to accumulate old and unsalable merchandise that nothing but eternal vigilance can keep a firm free from that error. It is very difficult for the ordinary investigator to make up his mind regarding this item in the company's statements; so much depends upon the business instinct with which the goods are selected and the judgment with which the future of the particular trade is forecasted. Another matter that one should know is, on what basis the value of the goods has been arrived at. In our table it is stated that the merchandise is 'valued at cost,' meaning cost to The Blank Trading Company. In these figures, therefore, is included the manufacturer's profit, which again is affected by the credit of the purchasing company. The open accounts due by this corporation are fairly heavy, and one may reasonably conclude that the merchandise has not been reduced in cost by any discounts for cash. In short, it is proper to refuse to accept this item at its face value in estimation on the solvency of the company.

"In judging of a firm's or corporation's solvency the character of the goods dealt in must always be borne in mind. The difference between staple and fancy goods is one which not only distinguishes one trade from another, but is an important distinction many times to be drawn between a certain set of articles and another in the same store. Groceries may be accepted at almost full value even under the hammer, while silks and ribbons are dependent upon the caprices of fashion from one season to another. In like manner hardware can be taken at a close estimate nearer to its inventory value than can boots and shoes. Wool is a more stable article than woolens; and so we might go through the list. In the present instance it is proper to say that fancy goods are of uncertain value, yet one may assume that The Blank Trading Company deals in the more stable kinds. Nevertheless, it is clear that one cannot assume the full value for the stock of merchandise in question if sold at auction. Balancing all these probabilities, the value of this item may be fixed at $100,000.

"The proper valuations to be put upon book accounts and merchandise in cases of insolvency are constant subjects of study among those whose business it is to loan money to firms or companies either by direct discount or through purchase of commercial paper. Below is a table of liquidating values for five trades, compiled by a banker [James G. Cannon] of experience:

Trades.	Accounts receivable. Percentage good.	Merchandise. Percentage good.
Hardware	72	80
Dry Goods	67	70
Boots and shoes	80	65
Furniture	70	68
Groceries	40	95

"The experience of different bankers and of different trading firms and companies may be more favorable or unfavorable than this table indicates regarding the realizable value of book accounts and stocks of merchandise. It should, therefore, be modified in accordance with the business reputation of the men in charge, or of the traders in the particular section to whom the goods have been sold on credit.

"Item H, real estate, $27,000. This value seems a little high for the comparatively small amount of business done, and should have further investigation. Some small companies, sometimes through carelessness rather than actual error, add the cost of improvement made from year to year to the value of their real estate until this item comes to stand on their books at an amount much in excess of its actual selling worth. In the present instance, it is assumed that this has been the practice, and the actual value of the property by appraisal is $15,000.

"Item J, machinery and fixtures, is a small one in any case and need not be commented upon. If it were an important item, one should inquire as to the depreciation.

"Item K, merchandise in bonded warehouses, $37,600, is subject to the same criticism as regards its real value as that already passed upon the merchandise in stock; that is, for the purpose of questioning the solvency of the company or of putting a value upon its preferred or common shares, if the figures named in the statement are too high. In addition to this, it is noted in the business statement that a part of this bonded merchandise is subject to trust receipts.

"It is common practice for firms doing an importing business to have the foreign goods consigned to a New York City banking house, upon whom also the foreign bills are drawn payable in a certain number of days, varying according to the customs of the different countries. It frequently happens that these goods reach their destination before the bills drawn against them are due. In order that the merchandise may be sold by the importing firm soon after arrival, an arrangement to this effect is made through trust receipts. One form of such receipts gives the importing house possession of the goods, but without title, the house or corporation guaranteeing to hand the proceeds of the sale over to the banking house. Another form permits the putting of the goods in store under warehouse receipts. These forms are varied according to the circumstances of the case and the credit standing of the importing company; but in whatever way the business is transacted, the meaning is that the merchandise affected is not the property of the importing house, and cannot, therefore, be included in its list of assets. In the present case, something must be deducted from the face value on this account also. It will be dealing generously with this item if it is put down at $20,000.

"By adding up the assets as revalued, we find the total to be $177,400. A glance at the table of liabilities shows a total of $320,000. If from this one deducts for his own purpose capital stock and the profit and loss—the latter item being simply to balance accounts—he finds the actual debts for money to amount to $185,000, or about $8,000 more than the assets as valued in our examination. This means, in effect, that if the company should be wound up, the holders of both preferred and common stock would lose their whole investment and very likely some of the creditors also would not be paid in full. Although according to the statements this trading company paid dividends last year amounting to eight per cent. upon the preferred and twelve per cent. upon the common shares, yet it is clear that no dividends ought to have been distributed until a fund had been accumulated which would balance the possible bad debts and depreciation of merchandise of which we have spoken. The sales are stated to have amounted the preceding year to $350,000. This, it will be noted, is only three and one-half times the capital. There has been some gross mismanagement of the business because modern conditions demand that the capital should be turned over many more times than this during the year. This impression is confirmed when we look at the amount of business expenses, $60,000. Taking the expenses and dividends together, it will be noticed that it required twenty per cent. profits on the small amount of sales to meet them. Few business houses in these days of sharp competition can be assured of the continuance of so large an average gross profit as that at wholesale.

There is clearly something the matter with the affairs of the company. It is possible that some of the excess in accounts receivable already spoken of represents bad debts contracted by the company in order to cover so large an amount of business expenses. To secure so large a percentage of profit they have been willing to sell goods to retail houses with indifferent credit. If these bad debts had been charged off there would have been no dividends and it might have been found that expenses had not been earned.

"Although the valuation put on the assets shows that at forced sale they would only realize enough to pay the creditors, it does not follow that the affairs of the company cannot be retrieved. There is a foundation here for better business. If energy and ability can be secured, in the management, the amount of sales can be doubled and expenses reduced so as to show a great change in the proportion to the volume of trade. If for a while the profits thus realized could be applied to the reduction of the uncertain items among the assets, it is possible that in a few years the aspect of things could be so completely changed as to show that the company was again in a sound condition.

"Complete change in the modern methods of supplying mercantile credits makes it necessary for the lender of money, whether on commercial paper or in the form of bonds or of preferred shares, to rely upon the general solvency of the firm or corporation. This of itself makes needful a more or less thorough investigation into the whole affairs of the borrowing houses. Very likely in this matter as in other lines of business there will arise banks and banking houses which will make a specialty of such loans.

"The same set of facts puts a new responsibility upon the firms and companies which ask for credit. These requests for loans involve two things: first, that the borrowers are honest and mean to pay—which, in the majority of cases, is taken for granted,—and second, that there is a reasonable hope of their ability to pay. This latter point does not concern the honesty of the managers, but depends for its answer upon a wide estimate of business facts. It is, therefore, no reflection upon a borrowing firm or company to have the investor or lender ask for such a statement of their affairs as shall enable him to form a business judgment upon their condition. The asking for investment money on mercantile loans from the banker or investor implies, therefore, that such a statement shall be forthcoming.

"The habit of making such statement for more or less public examination will cause the managers to give even closer attention to the meaning of various items which they are carrying upon their books. In this way conservatism is increased by the conditions of doing business, which now demand, on the one side, large loans of capital, and, on the other, business ability and honesty without sentimentalism."

The foregoing quotations from expert sources are given to suggest the scope and the importance to corporations of the professional services of auditors and accountants. Honest and competent officers, directors, and bookkeepers, or other employes whose work is subject to inspection and supervision, should not think they are under suspicion by the body represented by an auditor, but should be glad of the opportunity to have their work examined and approved by one occupying an independent and disinterested position. Often an accountant will recommend to the stockholders changes in the business that the directors have sought in vain, such, for instance, as an increase in capital stock; or he will agree with the bookkeeper that the system of bookkeeping in use may be greatly improved or that it should be discarded entirely and will make the suggestion to the directors and perhaps secure the betterment. The accountant or auditor should, of course, be independent of all personal influences, a man of established character and firm will. It is almost needless to say that the same qualities should belong to a bookkeeper.

§ 66. A CORPORATION'S BOOKS.

The general account books of a corporation are the journal, cash book, sales book, and ledger, which are the books used by individuals and partnership companies in business. There may be also other auxiliary books which have to do with the general commercial business of private concerns and corporations. All these books are kept under the supervision of the treasurer of the corporation. But there are certain books required in a corporation that are not used by individuals and firm business. These are the minute book, the book of stock certificates, the stock transfer book, the stockholders' ledger, and the dividend book. These books, with the exception of the dividend book, which is usually kept by the treasurer, are kept by the secretary. There may also be, when they are required by the particular circumstances of organization, a stock subscription book, an instalment book, and an instalment scrip book.

§ 67. The Minute Book.

The minute book is a record of the proceedings of the stockholders and the board of directors of the corporation. Its contents consist of the dates and places of meeting, the names of the members present, the business transacted, resolutions passed, important resolutions discussed and defeated by vote, etc. Discussions and remarks of stockholders or directors are not usually recorded unless they throw particular light on an important circumstance or condition. Important correspondence, contracts, reports, etc., may be "spread" upon the minutes; that is, copied into the minutes. The secretary should keep on file, for reference, other correspondence and documents introduced at a meeting. The first pages should contain a certified copy of the articles of association of the corporation, or a transcription of the articles made by the secretary, followed by the by-laws, recorded by the same hand. The secretary should then certify that the foregoing by-laws are a true and accurate copy of those adopted by the stockholders or directors at a certain meeting specified as to time and place. Several blank pages should be left for entering amendments, and then should follow the minutes of the first stockholders' meeting. The minutes of stockholders' and directors' meetings may then be entered as they occur, care being taken to distinguish them by the headings "Meeting of the Stockholders," "Meeting of the Directors," with time and place.

There should be but little or no space left between the minutes of the various meetings, and then no false minutes can be entered without detection. When necessary, additions to minutes may be made on the page margin. Cross lines in ink may be made over the space left at the bottom of a page in order to prevent false entries. Minutes recorded with pen and ink in a bound book are legally the most satisfactory. Loose-leaf minute books may easily have substitutions made in them so that their value as authentic records is more often open to question. Every page of a loose-leaf minute book should be certified to by the proper officers, and not just the minutes as a whole on the last sheet. Sometimes separate minute books are kept for stockholders' and directors' meetings, but usually only in large corporations. The minutes should always be signed by the presiding officer and the secretary in order to establish their authenticity. The minute book is kept by the secretary of the corporation, and should remain in his possession. Entries should be made by no one else. A properly-kept minute book is evidence in law of the acts of stockholders and directors at their meetings. Therefore the secretary should take great care that the minutes are exact. They should be written into the minute book immediately after the meeting, unless sufficiently elaborate notes have been taken of the proceedings. Sometimes the presiding officer will ask that motions and resolutions aside from routine matters, such as motions to accept, adjourn, etc., be submitted in writing by those proposing them; the resulting documents are turned over to the secretary and form part of his notes, preventing mistakes which might otherwise occur. A meeting of stockholders or directors expresses its will by motions and resolutions which are introduced, discussed, and passed or rejected according to the rules of order adopted by the deliberative body using them. It is often desirable that the introducer and the seconder of a motion or resolution be named in the record of a meeting, but the absence of the names does not affect the authority or force of the action. Actions taken by motions and resolutions are directory or mandatory according to their nature and language, and are binding on officers or agents, if necessary to be carried out by them, in the one degree or the other. When a stockholder or director has objections to an action of the body to which he belongs, he may wish to have his objections recorded in the minutes. He may present his objections orally or in writing, and the presiding officer will decide whether they are pertinent and shall be recorded. If presented in writing, that fact should be noted in the minutes and the document should be kept on file if it is not spread upon the minutes. If the objecting member files objections to an action and does not afterward acquiesce in it or assist in giving effect to it, he may sometimes avoid liability resulting from the action. A mere vote of "No," with subsequent acquiescence, implied or actual, will not relieve him from liability. A member's subsequent attitude toward an action should always correspond with his objections if he wishes to avoid personal responsibility. If liability is likely to result from an action to which he objects, he may demand that his objection be recorded. The minutes of meetings are read by the secretary and are approved or amended at the next subsequent meeting of the body whose actions they record. If no member of the body objects to the minutes, usually the first item of record at the next meeting after the time, place, and members present, is that the minutes of the last meeting were read and approved. If there is a correction to be made, the formality depends upon the apparency or importance of the correction. A member may call attention to a mistake in spelling a name, in a date or some other obvious matter and the president may, without formal action, direct that the change be made. If a more important error is made, especially if there is a question or dispute over it, a motion may be necessary to accomplish a correction. But whether the matter in question was an error or not, if a majority of those present at the current meeting order that a change be made in the minutes of the previous meeting the secretary must make it. The minutes of the current meeting should report the corrections or changes ordered in the previous minutes and the portions of the previous minutes changed should be stricken out by having a red line drawn through them and the matter ordered to be inserted should be copied between the lines in red ink. A marginal reference should be made to the minutes of the meeting when the changes were ordered. Sometimes, in order to maintain its legal existence, a corporation organized under the laws of one state, but having its principal office in another state, must have an annual meeting of the stockholders in the domiciliary state. This is a provision of the statutes of some of the states. In a case of this kind, the non-resident corporation is usually represented in the parent state by a few of the officers or stockholders or a resident director, and a majority of the stock is represented by proxies taken or sent to the meeting. The minutes of the meeting are prepared beforehand by the secretary and are sent with the proxies. The proceedings and actions to be taken have been decided by the majority stockholders, and the reasons for the meeting are to comply with the law as to the necessity of stockholders' meetings at given intervals or to legalize the acts that have been determined on previously by the majority stockholders. The regular officers, or officers appointed at the meeting, have charge of the proceedings, the minutes are read, and the actions they recite are formally taken, and the meeting is adjourned. The minutes are then returned to the secretary, if he was not present, and are recorded by him. This is a common practice in contemporary corporation management.

§ 68. **The Stockholders' Ledger.**

The stockholders' ledger is used for the stock accounts of the various stockholders. It shows the number of shares originally subscribed for, the transfers made, and the balance of stock held by each member of the corporation. Stock is posted to the debit of the persons to whom it is delivered, and the accounts are credited when the stock is subsequently transferred to other persons. It may and should comprehend, where the law does not necessitate their being kept separately, a stock register, giving the names of stockholders arranged alphabetically, their addresses, and such other matter as is necessary or desirable. The entries in the stockholders' ledger are obtained from the instalment book, where there is one, and from the transfer book or stock certificate book, either of which "serves as a journal to this ledger, as it shows the names of parties to be charged and those to be credited for the shares sold or transferred." The fore part of this ledger should contain a capital stock account, and all instalments paid or full stock payments made should be debited to capital stock. The stockholders are credited with the amounts paid, so that the two accounts should balance and show the paid up capital.

§ 69. The Book of Stock Certificates.

This book contains the blank engraved certificates of stock and the stubs thereto attached. These certificates are issued to the stockholders when the full amount of their subscription to the capital stock has been paid. If there is an instalment scrip book, the certificate is exchanged for the scrip when all the instalments have been paid. The certificate book should contain as many certificates as it is thought will be needed, taking into consideration the likelihood of several transfers of stock. In "close" corporations, a corporation in which the stock is held closely, not transferred, only a few more certificates than there are stockholders will be necessary, while in a corporation whose stock is actively traded in, a great many certificates will be needed. The certificates are issued serially and are so numbered. The stubs are numbered to correspond with the certificates, and contain such information as the number of shares issued, the date of issue, to whom issued, from whom transferred (if so), and receipts for the certificates to be signed by those to whom shares are issued. Certificates are made out, seals are attached, stubs are filled by the secretary, and the certificates are signed, as statute or by-laws provide, by the president and secretary or the president and treasurer. If the engraved certificates are not ready for distribution when the company is organized, receipts for money paid are given, or temporary written or printed certificates are issued which are worded as the permanent certificates are to be worded. These receipts or certificates are exchangeable for the permanent ones. Attached to them are slips showing the circumstance under which they were issued and stating that they are to be exchanged. Common and preferred stock certificates are worded differently and are usually bound separately, especially if there are many of each. They should always be numbered separately. When a stockholder transfers all or any part of his stock, the certificate must be returned to the secretary of the corporation. On the back of the certificate is a blank form of assignment and power of attorney which must have been properly filled and signed by the transferrer, whose signature must be witnessed by a competent witness. The secretary pastes the certificate to the stub from which it was detached, and writes or stamps across the face of the certificate "Cancelled * * * (date)." He also notes on the stub to whom the transfer was made and issues a new certificate or new certificates to the person or persons designated as transferee or transferees. If the owner of the certificate retain part of the shares, a new certificate is issued to him for the part he keeps. In this case there should be noted on the old stub "Renewed by No. ——," inserting the number of the new certificate, and on the stub of the new certificate, "For No. ——, Cancelled," inserting the number of the old certificate. The account of the transferrer should then be debited on the stockholders' ledger for the shares transferred. In making this partial transfer, the transferrer will probably bring in his certificate and get two certificates for it, one for the number of shares to be transferred in the name of the transferee and one for the balance of his own shares made in his name. If for any reason the sale should not be made, the transferrer has to get the transferee of the shares meant to be sold and already transferred to reassign them. So a better way, where there is any doubt at all of a prospective sale, is for the transferrer to exchange his original certificate for two certificates made out to himself for the amounts respectively to be sold and to be retained, and, if the sale occurs, simply to assign the certificate with the shares sold, leaving the new owner to get a certificate in his own name.

Sometimes shares are transferred in blank, i. e., the transferer signs and has his signature witnessed, but does not put in the name of the assignee. The secretary of a corporation has nothing to do with stock so assigned till some holder of the certificate wishes to perfect his title by inserting his own name and sending the certificate to the secretary in order to become a stockholder of record. If the secretary has any doubts as to the validity of an assignment of stock, he has a right to investigate the transfer by communicating with the former owner or owners before making the transfer. He may require a stranger presenting a certificate for transfer to be identified and he may demand proof of ownership of any one so presenting a certificate. If, finally, after investigation there be any doubt of ownership, the secretary may refuse to make the transfer till authorized by the board of directors, who, in turn, if there are several claims to ownership of a certificate, may wait till the contested matters are adjusted by the parties themselves or are settled by the courts. If there is no reasonable doubt as to ownership and as to the correctness of the transfer, the secretary is bound to make a transfer on request.

§ 70. The Transfer Book.

Smaller companies do not always have transfer books, as the assignment on the back of a certificate is legally sufficient to authorize the secretary to make a transfer of record and to issue a new certificate to the purchaser. Some states, however, require a transfer book to be kept by a corporation. Every large corporation whose stock is active should have a by-law which requires that shares shall be transferable only by entry on the books of the corporation, for then it is possible for the corporation officers and directors to know who are entitled to vote, who are entitled to receive dividends, and who are liable as stockholders to the corporation and its creditors. The transfer book kept separate from the stock ledger and certificate book is a great convenience and a more accurate and permanent record of the history of stock transfers. In instances when there has been a dispute as to which book is primary evidence of transfer, it has been held that the transfer book must control over the stock certificate book and the stock ledger.

The stock transfer book is merely a book to record the transfer of stock from one ownership to another, with the number of the stock certificate taken in set against the number of the stock certificate issued, and with a further provision for the name of the person who has been authorized to make the transfer, if the owner himself does not present the stock. The form of such a book would be two columns on one side, with the number of the stock certificate taken in and the name of the owner delivering it, and two columns on the other side for the number of the new stock certificate issued, with the name of the person to whom the stock is issued, with yet another column for the name of the person who made the transfer as an agent for the owner, if the owner did not personally present the stock. One line is used for each stock certificate either received or delivered, and the transaction therefore runs across the page as a complete record of the stock taken in, the person who transferred it, the person to whom it was transferred, and the number of the new certificate. There will also be references to the pages of the stock ledger where the stock accounts of the transferrer and transferee are recorded.

There are various kinds of transfer books, made to suit various needs. There is one form which is a detached assignment, the same form of assignment as is printed on the back of the stock certificate, except that the power of attorney is omitted. It is merely a device for signing an assignment when the stock certificate is not in hand.

Another kind of transfer book consists of forms of assignment, bound together and numbered, which are filled out when a stockholder makes a transfer. The following is representative of this kind of form:

Transfer No. ...... Ledger Folio ......

For value received, I hereby assign and transfer to Robert Bell all my right, title and interest in *one hundred* shares of the capital stock of The McRay Publishing Company, of Indianapolis, the said stock standing in my name on the books of said company and represented by certificate No. ......, this 9th day of February, 1906.

JAMES REED, Witness. SAMUEL MINNICK.

New Certificate, No. ......

Issued to Robert Bell, Ledger Folio ......

When such transfer is made by an agent, his power of attorney should be filed away by the secretary of the company, unless the power is granted on the cancelled certificate, which is sufficient. The secretary fills in the blanks Transfer No. ———, Ledger Folio ———, New Certificate No. ———, and [Assignee's] Ledger Folio ———.

The last form is more protective of the transferrer of stock, for a stockholder is liable to the creditors of his corporation until the transfer is formally recorded, personally or by attorney, on the corporation's books. This form gives the signature of the transferrer, with date and witness, so that he is relieved from the risk incident to delay on the part of a transferee who has not surrendered an assigned certificate.

§ 71. The Dividend Book.

The dividend book, when one is used, is usually kept by the treasurer of a corporation. It is a record of the stockholders, with the number of shares held by each set in a column after the name, followed by a column in which is given the amount of the dividend. After this comes a column in which is set down the date of payment, and last, a column in which the stockholder signs his name in receipt for the dividend. In large corporations, where there are many scattered stockholders, payment is made by voucher.

§ 72. The Subscription Book.

As subscriptions to stock are a contract as between the subscribers, and are binding from the time they are made, a subscription book has the nature of a contract as well as of a record. The contract does not go into effect, of course, till the corporation is fully organized and created. Such mutual contracts to become stockholders in a prospective corporation are binding at common law, but they are not binding and enforceable until the proposed capital stock is subscribed, unless there is a special agreement to that effect in the subscription contract. Under the statutes of most of the states, however, corporations are not bound so closely. Some part of the capital is specified as a minimum amount with which the corporation may begin business, and this amount is named in the charter. As soon as this amount is subscribed, the subscriptions are enforceable. The amount should be set out in the subscription agreement as that with which the corporation will begin business. The subscription book contains the names and addresses of the subscribers for stock, and the number of shares subscribed by each. A small book serves the purpose usually, unless the corporation is very large and the prospective stockholders are many. In a small corporation a single sheet of paper is oftentimes used, or small, individual subscription blanks are printed. These blanks are sometimes used in forming large corporations and the subscription book is used as a mere record. To make a subscription contract binding, it must name the par value of the stock subscribed. It should also name the amount of capital stock.

The following form may be used as a page contract and record, where there are no special conditions and stipulations:

CHICAGO, ILL., September 12, 1904.

We, the undersigned, hereby severally subscribe for the amount of the capital stock of The Gray Manufacturing Company set opposite our respective names, and agree to take and pay for the stock at its par value, in cash, on demand of the treasurer of the company, at the office of the Union Trust Company, of Chicago, Ill. The capital stock of said corporation is to be $100,000, divided into 1,000 shares of $100 each, par value.

(Provide four columns to follow here. In the first is set down the dates of subscription; in the second, the signatures of the subscribers; in the third, the number of shares subscribed by each; in the fourth, the addresses.)

We, the undersigned, subscribe our names in witness to the foregoing subscriptions and signatures, in the city of Chicago, state of Illinois, this 20th day of September, 1904.

JAMES GRAY, President.
WALTER LORD, Secretary.

If the corporation is issuing both common and preferred stock, the agreement should recite the total amount of capital stock, the number of shares, how much of it is common and how much preferred, and the par value of the shares. Then a column should be placed in the subscription book, after the column in which is to be written the number of shares subscribed, to denote whether the shares subscribed are common or preferred. Care should be taken to make the subscription "we subscribe," and not "we agree to subscribe," which has a different meaning.

When there are special conditions attaching to a subscription, they should be set out in detail. It may be suggested that inserting unlawful conditions will make such a subscription contract void. When a prospectus has been sent with subscription blanks, it has been considered that the representations made in it must be fulfilled by the corporation in order to make the subscription hold.

§ 73. Instalment and Instalment Scrip Books.

Sometimes stock is to be paid for at given times, in given per cents, till the payment is completed. The instalment book consists of the instalment lists, one of which is made out just before an instalment is due. These lists, each of which is headed by the number of the instalment and the per cent., are made up from the subscription book, and contain several columns. The first gives the date the instalment is due; second, the name of each subscriber; third, the number of shares; fourth, the amount of the instalment due (in dollars); sixth, interest on instalments (for use when the instalment is not paid on due date); seventh, amount received on instalments; eighth, ledger folio; ninth, date of payment of instalments. The individual subscribers are credited for payments in the stock ledger accounts, and the totals of instalments paid are carried to the general cash book. The instalment scrip book is a receipt book made with special reference to the instalments to be paid. When all the instalments are paid, these receipts are returned to the corporation by subscribers, and given in exchange for certificates of stock, one certificate, of course, being issued for one complete series of instalment scrips. The following is a form for such scrip, consisting of stub and receipt. Brackets [] indicate blanks to be filed by the secretary:

Installment Scrip No. [1].

Gray Manufacturing Co.,
Chicago, Ill.
[100] shares.

[First] Installment, [10] per cent. [$1,000.00].

Installment due, [Date].

Installment paid, [Date].

Received the scrip.

....

[$1,000.00]. [100] Shares.

GRAY MANUFACTURING COMPANY,
Chicago, Ill., [Date].

Received from........................the sum of [One Thousand] Dollars, which is the [first] installment of [10] per cent in payment on subscription for [one hundred] shares of the capital stock of the GRAY MANUFACTURING COMPANY.

Said shares are reserved and set apart for the subscriber or [his] assigns on condition of the fulfillment of the terms of subscription.

..........Secretary. ....President.

§ 74. The Corporation Calendar.

Every corporation should have a corporate calendar as a reminder of those formal matters of corporate concern that must be attended to at stated times. The calendar is a book or card of memoranda, arranged in chronological order, relative to such matters of corporate procedure and business as paying taxes (franchise, county and city), notices of stockholders' and directors' meetings, reports to state officials, etc. In preparing a calendar, the secretary of the corporation will examine the statutes of the state under which the corporation is organized, and the statutes of the state or states in which it is doing business, so as to include in the calendar all the obligations imposed on the corporation and the time for performing the obligations.

The following corporate calendar is prepared for the year 1905, for a corporation which, according to the statute under which it was organized, the laws of the place where it is doing business, and its own by-laws, holds its annual stockholders' meeting on the last Monday in January, a directors' meeting on the first Tuesday in each month, makes an annual report to the state auditor on the last day of January, lists its property for taxation March first, is entitled to a hearing before the taxing board within the last half of the month of June, pays taxes on or before the first Mondays of May and November, pays a semi-annual dividend following the directors' meetings in January and July, closes its stock-transfer books twenty days before each stockholders' meeting, and requires five days' notice of directors' meetings and ten days' notice of stockholders' meetings. In the case of reports, payment of taxes, etc., it is well to make a memorandum ten days or more before the expiration of the time allowed for completing the work. When the regular day for doing any act, such as giving notice, etc., falls on Sunday, the memorandum is made on the preceding Saturday. The July meeting of the directors falling on a holiday (the Fourth) the calendar provides for holding the meeting on the next day.

Corporate calendar of the ...... Company of ......

1905.

January
  3. Directors' meeting.
  5. Payment of semi-annual dividend.
  10. Close transfer books for annual stocksholders' meeting on January 30.
  20. Notify stockholders of annual meeting on January 30.
  21. Prepare annual report for state auditor before January 31.
  30. Annual meeting of stockholders.
  31. Forward annual reports to state auditor.

February
  2. Mail notices of directors' meeting on February 7.
  7. Directors' meeting.
  18. Prepare for listing property for taxation March 1.

March
  1. List corporation property for taxation.
  2. Mail notices of directors' meeting on March 7.
  7. Directors' meeting.
  30. Mail notices of directors' meeting on April 4.

April
  4. Directors' meeting.
  21. Taxes must be paid within ten days.
  22. Mail notices of directors' meeting on May 2.

May
  1. Last day for paying taxes.
  2. Directors' meeting.

June
- 1. Mail notices of directors' meeting on June 6.
- 5. Tax Board of Review meets June 15.
- 6. Directors' meeting.
- 15. Tax Board of Review meets.
- 29. Mail notices of directors' meeting on July 4-5.

July
- 4. Holiday.
- 5. Directors' meeting.
- 6. Payment of semi-annual dividend.
- 27. Mail notices of directors' meeting on August 1.

August
- 1. Directors' meeting.
- 31. Mail notices of directors' meeting on September 5.

September
- 5. Directors' meeting.
- 28. Mail notices of directors' meeting on October 3.

October
- 3. Directors' meeting.
- 21. Taxes must be paid by November 6.

November
- 2. Mail notices of directors' meeting on November 7.
- 6. Last day for paying taxes.
- 7. Directors' meeting.
- 30. Mail notices of directors' meeting on December 5.

December
- 5. Directors' meeting.

§ 75. BOOKS REQUIRED BY LAW.

The kind of books a corporation keeps is usually left to the discretion of its directors. But there are laws in some states which require that corporations shall keep a certain book (it is almost invariably a stock book) or books. The New York law, for instance, requires that "every stock corporation must keep at its office correct books of account of all its business and transactions, and a book to be known as a stock book, containing an alphabetical list of stockholders of the corporation showing residence, number of shares held by each, the time when they became owners, and the amount paid thereon." A board of directors of any corporation should know the laws as to books both of the parent state and the state in which the principal offices are located and also of the foreign states in which the corporation "does business." The New York law requires that "every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, etc." There are penalties for non-compliance in the various states having these provisions, so that a board may save trouble and expense by familiarizing itself with the laws on this subject.

PART VIII.

DISSOLUTION, CONSOLIDATION AND REORGANIZATION OF PRIVATE CORPORATIONS, RENEWAL OF CHARTER, AND CORPORATION INSOLVENCY, BANKRUPTCY AND RECEIVERSHIPS.

DISSOLUTION, CONSOLIDATION AND REORGANIZATION OF PRIVATE CORPORATIONS AND RENEWAL OF CHARTER.

§ 76. Dissolution of a Private Corporation.
77. Consolidation of Private Corporations.
78. Reorganization of a Private Corporation.
79. Renewal of Charter.
80. Corporation Insolvency, Bankruptcy and Receiverships.

§ 76. DISSOLUTION OF A PRIVATE CORPORATION.

There are five ways in which a corporation may cease to exist. If it is created to exist for a given term of years, named in the charter, it dies at the end of that time. Second, the charter may be repealed by the legislature of the state which granted it, if the statute contains a clause, which most statutes do, providing that it may be repealed at any time. Third, the charter may be surrendered voluntarily by the corporation, with the consent of the state. Fourth, the charter may be forfeited for nonuser or for some wrongful act which has been done by the corporation and for which it is called to account by the attorney general of the state. A court decides whether there is a forfeiture. Fifth, when all the members of a corporation die, so there are no stockholders left, it is generally considered that the corporation ceases to exist. This is the law, notwithstanding the fact that the corporation is distinct from its members. The last form of extinction is almost inconceivable in a moneyed corporation with transferrable shares since, when a stockholder dies, his shares pass to his heirs. There is, of course, no such thing as a resignation from a moneyed corporation, and no way for a stockholder to cease to be a stockholder except through a transfer of his stock or the death of the corporation. Whether a consolidation of two companies effects a dissolution depends upon the terms of the statute under which the consolidation is effected. One corporation may absorb another by purchasing, under statutory authority, all the shares, franchises, and properties of another corporation, and this may work a practical dissolution of the selling corporation.

A corporation is not dissolved by a sale and assignment of all its corporate property; by discontinuing business; by failure to elect officers and directors; by the acquisition by one person of all the stock; nor by insolvency.

Many corporations are not successful, and fail in their purpose. Having neither sufficient property or debts to make a formal dissolution necessary, they are simply abandoned by their officers and stockholders. Unless the charter is caused to be forfeited by the state, the corporation is not dissolved till the time limit expires. Failure to pay taxes due to the state is cause for forfeiture of charter. An inactive corporation may be revived at any time under such a running charter by paying delinquent taxes and other debts. Sometimes persons intending to carry on the same line of business as that authorized under a charter owned by an inactive corporation will buy the stock of the inactive corporation at a nominal price, which is less, usually, than it would take to buy a new charter, and will conduct their business under that charter's authority. Care must be exercised that they are not thereby acquiring liabilities of which they had no knowledge. When a corporation becomes insolvent, proper legal proceedings may bring about the appointment of a receiver, who will settle the affairs of the corporation and usually dissolve it.

Voluntary dissolution may be brought about by vote of a given fraction (usually two-thirds) or all of the stockholders of a corporation, according to statutory provisions. In the absence of statutory provisions, a dissolution may usually be brought about by consent of a majority of the stockholders and a decree of a court of competent jurisdiction; or it may certainly be brought about by consent of all the stockholders. Most states give the procedure for bringing about voluntary dissolution, and this procedure should be carefully followed so that all the stockholders and creditors may be bound by the action taken. The usual process is for the directors to call a stockholders' meeting, advertise it and notify the stockholders, and give evidence to the state that proper consent has been given to the dissolution. The directors are then given the power to pay creditors and to divide the remaining property among the stockholders. It has been held that a dissolution of a corporation does not destroy the obligation of a corporation's contracts, as the equitable rights of creditors survive the act of dissolution and attach to the assets and property of the corporation in the hands of its liquidators.

§ 77. CONSOLIDATION OF PRIVATE CORPORATIONS.

Consolidations of corporations must be made under statutory authority, since no corporation exists otherwise. For most purposes a complete consolidation of the capital stock, franchises, and properties of two or more corporations creates a new corporation. But, notwithstanding, rights of action against the constituent corporations will survive against the new corporation. It is a principle of law that a corporation succeeding a corporation whose property and rights it has acquired, must take the obligations of that corporation along with the benefits. Under some jurisdictions it has been held that a successor corporation is bound to the creditors of a constituent corporation only to the amount of property received from it, and that a creditor may prevent a corporation which owes him money from consolidating. A domestic corporation may consolidate with a foreign corporation, but there must be express statutory authority therefor.

Two companies may be united by the directors taking out a new charter and by the formal sale and assignment of the assets of each company to the new company, which may pay for the assets in stock. This is not a consolidation in law, and the new corporation is entirely separate and distinct, and is liable for the debt of the corporation whose assets were conveyed to it only to the extent of the assets received. In most of the states the statutes grant the power to consolidate to certain classes of corporations; and the method of consolidating, as well as the rights and powers of the new corporation thus created, are defined in more or less detail. In Indiana, articles of consolidation are filed with the secretary of state and are treated as the articles of incorporation of the new consolidated corporation and the fee is determined by the amount of capital stock of the new corporation created. The statutes of this state also provide that the consolidation of two corporations does not work the dissolution of either. Connecticut provides that corporations of a similar kind may consolidate into a single corporation which may be either one of the old corporations or a new corporation. It further provides that the directors of the corporations to be consolidated may enter into an agreement prescribing the terms and conditions of consolidation, stating the name of the new corporation, names and addresses of directors, provisions as to stock, etc., the manner of converting the shares of each constituent corporation into shares of the new, together with such other matters as are required in an original certificate of incorporation, and after proper notice to the stockholders of the constituent corporations and an approving vote of two-thirds of the stockholders of each class of outstanding stock, with other procedure as in filing an original certificate, the consolidation is completed. Consolidating corporations must be of the same class or similar classes, and for the same purpose or auxiliary purposes, and the articles of consolidation, like articles of incorporation, must be in accord with the statute under which they are framed. The procedure for consolidation given by a state should be adhered to strictly, so that the resulting organization may be free from defects and the stockholders and creditors of the constituent corporations may be bound by it.

§ 78. REORGANIZATION OF A PRIVATE CORPORATION.

It sometimes happens that the articles of association of a corporation are found to be, or in time become, unsuited to the business for which they were drawn. Further, it may not be possible to amend the articles so as to make them suitable. The statutes under which they were prepared may not permit an amendment in the direction which would place the corporation on the basis desired. Or it may be learned that the laws of the parent state do not give as free scope to the conduct of the business as is desirable, or that they are inhibitory in some other way. Or, the corporation may become insolvent, so that the only way to protect its assets is to sell them to a new corporation, which will continue the same business under the more favorable circumstances of freedom from debt, the old corporation having been dissolved. This is often done when the stock of the old corporation has been issued full paid and non-assessable, and only part of the stockholders were willing to pay a voluntary assessment in order to raise the money to put the corporation on its feet again. The stockholders in the new corporation are usually those who were willing to put more money into the enterprise through an assessment. Or, there may be an attempt to "freeze out" undesirable stockholders. In any of these instances a reorganization of a corporation may be necessary. A transference of the assets of the old corporation is made by voluntary or forced sale to the new, and stock is issued to some or all the stockholders of the old corporation upon an agreed plan of distribution.

As was said under the subject of consolidation, the successor corporation in the case of reorganization is a new corporation, but the assets it receives from the old corporation may be followed by creditors and be subjected to the payment of creditors' claims, unless it has acquired the assets at forced sale, as a receiver's sale, in which case the proceeds of the sale will have been distributed in payment of creditor's claims and there is no liability on the part of the successor corporation.

Where, however, a corporation takes advantage of a statute which permits a corporation organized under a previous statute to reincorporate under the statute superseding it, its identity continues, and its liabilities continue. The procedure for reorganizing by voluntary sale is as follows: First, a meeting of the stockholders of the old corporation, authorizing the directors to sell and outlining plans and arrangements; second, meeting of the directors of the old corporation, authorizing the proper officer to communicate the agreed plans and arrangements to the new corporation, and to conduct the sale if the plans are approved; third, communication of plans by officers of the old corporation; fourth, meeting of the incorporators and stock subscribers of the new corporation, who adopt a resolution authorizing their board of directors to accept the proposition of the old corporation; fifth, meeting of directors of the new corporation to accept proposition and to authorize proper officers to purchase the assets of the old corporation; sixth, formal acceptance communicated by officers of new corporation to officers of the old; seventh, payment of creditors of old corporation; eighth, formal transfer of assets; ninth, payment for assets in cash or stock. The same care should be taken that statutory and common law requirements are fulfilled as is taken in consolidations.

§ 79. RENEWAL OF CHARTER.

If a charter expires, a corporation may have it renewed according to statutory provisions. The renewal of a charter does not create a new corporation, but continues the existence of the old one. It has been held that a delay in application for renewal on the part of a careless officer did not permit a reverter of property, but that the renewal, when granted, related back to the time when the charter expired. Rights of action, of course, continue under the renewal.

§ 80. CORPORATION INSOLVENCY, BANKRUPTCY AND RECEIVERSHIPS.

Insolvency is of two varieties, actual and legal. The National Bankruptcy Act defines insolvency as that condition where the assets of a person, firm or corporation are less than the debts. This is an economic rather than a legal definition, since it has no precedent in law. Legal insolvency is that condition where the cash assets are not sufficient to meet debts when they fall due. Both conditions have existed many times in many businesses without fatal results, but both are indicative of bad or careless management. A continuation of the conditions leading to either kind of insolvency is bound to ruin a business sooner or later as the bad effects of these conditions seem to be cumulative. Where property, services or labor contributed as assets in exchange for securities of a corporation are valued too highly, honestly or dishonestly, by a board of directors, where assets are injudiciously used or where borrowed money has been wasted or mistakenly spent, where by "an act of God," through wind, fire or water, the property of a corporation is destroyed in part or in whole, where through any cause there is great depreciation in the property of a corporation or business, actual insolvency may exist practically from the beginning of a business. From the standpoint that a business just starting often must invest in properties that have comparatively small value, in proportion to their cost, to businesses other than that using them, actual insolvency might easily be charged to many new businesses. So long, however, as a business has been well conceived, has sufficient working capital and is conservatively, judiciously and honestly managed, this condition need cause no worry. Bad management, however, whether in buying and selling, in neglect of proper cost accounting and allowing for depreciation, or otherwise, may bring about this condition, and it sometimes may exist over a long period of time before it is discovered that the business has been eating up its own capital. The importance of a proper accounting system is nowhere more urgent than in a new business. Leaks in business must be discovered so there will not be a drain on the fixed assets. It is apparent that legal insolvency may exist when the assets of a business are much in excess of its liabilities. No matter, however, how valuable are its assets if it has not so ordered its business that it has or can command the cash to pay its debts when due. Legal insolvency may be due to many causes, but lack of working capital is the most common cause. Lack of working capital may come from insufficient provision in the first place, poor management in not keeping sufficient liquid capital, in paying dividends when the corporation must soon borrow more than normally, and in building or improving or putting earnings into any kind of permanent investment when funds soon may be required for other purposes. Sometimes the capital account is impoverished by inability to renew obligations for long-time capital and this may occur in time of panic, without fault on the part of the corporation.

It is worthy of note that, as Arthur S. Dewing points out in his book, Corporate Promotions and Reorganizations, "every crisis in the affairs of the large industrial combinations, with one exception, was the result of financial embarrassment. * * * The direct cause of failure in every instance was the deflection of working capital to the payment of interest and dividends. Beneath this as the fundamental cause was the lack of judgment of promoters in placing bonds upon untried industrial enterprise and lack of conservatism of the early management in paying dividends without due regard to sound principles of finance. Every corporation discussed in this volume paid out interest or dividends in the face of falling earnings, and none need have suffered serious financial difficulties had the amounts paid in interest and dividends been conserved. Many industrial consolidations more extravagantly promoted, with far greater discrepancies between capitalization and assets, have continued in business uninterruptedly to the present time and are prosperous, because their promoters issued no bonds, and their early directors exercised a wise conservatism."

Lack of working capital and other causes of failure have been investigated by the large mercantile agencies which furnish business and credit information. The following table, prepared by the Bradstreet Company, shows an estimate of the causes of business failures occurring in the United States during the four years preceding the panic of 1907:

	Percentages			
Causes of Failure	1907	1906	1905	1904
Incompetence	22.6	22.3	24.4	23.1
Inexperience	4.9	4.9	4.8	5.1
Lack of Capital	37.1	35.9	33.4	32.2
Unwise Credits	2.3	2.6	3.5	3.4

Failures of others	1.4	2.0	2.2	2.5
Extravagance	.9	1.0	1.1	.8
Neglect	2.5	2.2	2.9	3.1
Competition	1.2	1.0	1.5	1.3
Specific conditions	16.3	17.3	16.3	19.1
Speculation	.7	.8	.7	.8
Fraud	10.1	10.0	9.2	8.6

When a corporation fails, and it is shown that its earning power is insufficient to meet fixed changes and to pay a profit, such a condition is one of actual insolvency. The corporation then may dissolve and distribute its assets among its creditors and stockholders.

The National Bankruptcy Act of 1898, enacted under authority of the United States Constitution to establish a uniform law on this subject, permits any corporation to go into voluntary bankruptcy except municipal, railroad, banking and insurance corporations, which may not become either voluntary or involuntary bankrupts. Under the amendment of 1910, any moneyed, business, or commercial corporation may be thrown into voluntary bankruptcy. Individuals and partners may ask to be declared bankrupt to get a discharge from their debts, or their creditors with unsatisfied claims may seek bankruptcy for the debtors in order to secure an equitable distribution of the assets of the bankrupts. Bankruptcy proceedings are administered by referees in bankruptcy under the federal courts. They are chiefly valuable to uncover irregularities in conduct of the business in the past, to protect unsecured creditors by preventing secret transfers of assets and the preferring of creditors and to make invalid any judgments and liens secured by favored creditors within four months of the bankruptcy period. Bankruptcy discharges those taking advantage of the law from all indebtedness, leaving no balance to be paid after the parties are discharged, even though the assets are insufficient to pay all claims. Nevertheless, bankruptcy is rarely to the best interests of either creditors or stockholders. A corporation has no standing after going through bankruptcy and rarely is re-established.

It must, of course, raise new capital if it continues, and this is likely to be difficult. From the fact that it has gone through bankruptcy, its financial standing in the community on which it has depended for funds will be badly damaged. It may have, however, unsalable good will, in wide and general knowledge of some of its products, and it may continue to do business under the old name. If the same management is to continue, it makes no difference whether the name is changed or not. A new management may want a new corporate name, while using the same name for the products. A disadvantage of bankruptcy as compared with a receivership is the greater comparative disregard of the interests of the stockholders.

Receiverships seek both to secure an equitable settlement between the corporation and its creditors and to conserve the corporation's business, if it is possible. A bill in chancery is filed in a court of equity and this petition, if granted, secures the appointment of a receiver by the court. Bills may be presented in any state courts having jurisdiction or in the federal courts. Bills as to interstate corporations usually are filed in the federal courts. A petition may be presented on behalf of the corporation itself, of the stockholders, of secured or unsecured creditors, or of the state. Most receiverships are granted on behalf of secured creditors. When a corporation finds itself in a critical financial situation, it frequently happens that the management arranges with some unsecured creditor to petition for a receiver. The corporation confesses insolvency and a receiver, previously agreed upon by the management and the creditor, is appointed. This is known as a friendly receivership. The friendly receivership plan, while effective and desirable when properly used, has been made the means of abuse. Suppose bad management on the part of officers has brought a corporation to a crisis! It is possible by this plan to secure a receiver who will rehabilitate the corporation at the expense of stockholders or creditors, cover up the delinquencies of the officers and managers and later turn the corporation back to them without letting the public know the true cause of failure. Some large corporations, such as railways, have secured the appointment of a friendly receiver because it was easier to raise funds to construct new properties by the issuance of receivers' certificates than it would be by issuing other securities. As, under these circumstances, the receiver stands more for the owners than for the creditors, having an ulterior motive in favor of the officers or owners, he is not a proper receiver in the strict sense. When new receivers were asked for the Northern Pacific Railway Company, the court said, "They [receivers] must be men entirely indifferent between contending factions. They must be men that have had no connection with this conflict. They must be men who are strictly impartial, and will perform their duty in single devotion to the trust, and with no ulterior purpose to serve." Corporations seldom apply for a receiver on their own account and stockholders complaining of the management often are told by the court that their remedy lies in the selection by themselves of new directors and new management.

The most frequent though not the only cause for appointing a receiver is insolvency of the corporation. If it makes default in payment of the principal or interest of a mortgage debt, and suit is brought to foreclose the mortgage, a receiver may be appointed to preserve the property and conduct the business until property and business can be sold for the payment of debts. The same action will be taken where there has been long delay in the payment of a judgment. And even when suit is brought for a simple debt a receiver may be appointed if it appears that there are other debts exceeding the company's ability to pay, which make a receivership necessary to prevent the seizure of the corporate property by piecemeal and the consequent destruction of a valuable business.

When the charter of a corporation is forfeited and the corporation is dissolved by order of court in *quo warranto* proceedings on behalf of the state, a receiver is appointed by the court for the three-fold purpose of restraining the corporation from using the forfeited franchise, providing for the satisfaction of corporation debts, and preserving the corporation property for the use of the stockholders, who, by the dissolution of the corporation, become tenants in common in its surplus effects. In like manner a receiver may be appointed when the charter of a corporation expires.

A stockholder of a corporation may procure the appointment of a receiver by showing that its affairs are being fraudulently mismanaged by the corporation officers, or that the business is being operated at a loss or is so heavily indebted that its property is liable to be seized and wasted by creditors or that the company has voluntarily ceased business, and that the interests of the stockholders are not being properly cared for, or by showing any sufficient cause for dissolving the corporation.

Public service corporations, such as railroad companies, street railroad companies, water companies and gas companies, are sometimes placed in the hands of receivers on the application of patrons to safeguard the interests of the public, which depends on the performance of their franchise duties for transportation, water, light, heat, etc.

The appointment of a receiver is made by the court upon the application of a party having legal rights which, he shows the court, will suffer unless there is a receivership. The general rule is that the petitioner must make a *prima facie* showing that he has a cause of action for some substantial relief, as the mortgagee for the foreclosure of his mortgage, the general creditor to recover a judgment, the Attorney-General for a forfeiture of the charter, the stockholder for a distribution of the company property, or a citizen for the performance of a public service. The existence of the cause of action, and also the existence of special facts which make a receivership necessary, must be established by affidavits or other evidence, depending on the local rules of practice.

Notice to the corporation through its officers is usually necessary before the court will appoint a receiver. This notice must be given for such a reasonable time as will enable the company's officers to oppose the application if they wish to do so. What is a reasonable time will depend on the facts of each case. If it is shown by affidavits that the interests of the complaining party will suffer by delay, as where the officers are charged with selling the corporation property with the intention of converting it to their own use, or carrying it away beyond the jurisdiction of the court, a temporary receiver may be appointed immediately to take charge of the corporation property and business until notice can be given and the party afforded a hearing on the question whether or not the receivership shall be made.

In Davis v. Gray, 16 Wall. (U. S.) 203, 21 L. ed. 477, the court defines the position of a receiver as follows:

"A receiver is appointed upon a principle of justice for the benefit of all concerned. Every kind of property of such a nature that, if legal, it might be taken in execution, may, if equitable, be put into his possession. Hence the appointment has been said to be an equitable execution. He is virtually a representative of the court, and of all the parties in interest in the litigation wherein he is appointed. He is required to take possession of property as directed, because it is deemed more for the interest of justice that he should do so than that the property should be in the possession of either of the parties in the litigation. He is not appointed for the benefit of either of the parties, but of all concerned. Money or property in his hands is in *custodia legis.* He has only such power and authority as are given him by the court, and must not exceed the prescribed limits. The court will not allow him to be sued touching the property in his charge, nor for any malfeasance as to the parties or others without its consent; nor will it permit his possession to be disturbed by force nor violence to be offered to his person while in the discharge of his official duties. In such cases the court will vindicate its authority, and, if need be, will punish the offender by fine and imprisonment for contempt."

A receiver is by no means all-powerful, but must ask orders from the court as to his acts, if he has any doubt as to his powers, and may be personally liable if he exceeds his authority. The court directs the disposition of assets of the corporation under his control. His function originally was administrative and conserving rather than constructive and, to use an economic term, entrepreneurial. Frequently and increasingly it happens, however, that these last elements enter into his administration and that a corporation regains its financial stability and is returned to its owners in good condition. While the corporation is in the hands of the receiver, its corporate functions cease. The receiver acts in place of officers and managers, and brooks no interference from them. He does not pay dividends on common or preferred stocks nor interest on bonds. If he is cramped for working capital, he can issue receiver's certificates, which are a prior lien on the assets of the corporation before prior lien, first mortgage or any other kinds of bonds. As he has no fixed charges in the way of interest to pay, if there are bonds, he can save part of this money, if earned, for working capital. If assessments on stock, or unpaid balances on stock, or a double liability on stock or a special liability on stock for some class of creditors are available as assets, he can draw on these sources. A keen receiver usually will find methods of cutting expenses, perfecting the organization and at the same time running the business so as to make a maximum of profit under the circumstances with a minimum of expense. By rigid economy and a gradual process of increasing the net earnings, the business develops and oftentimes pays all claims in full. Such a receiver is usually worth what is allowed him by the court for his services. Courts are supposed to make allowances for receivers on the basis of the value of the same work in the world of business. Too often, however, receivers who are of little value to the corporation they serve are paid ridiculously large fees, and it may be stated that the greatest and most general abuses in American receiverships at present are the excessive fees allowed receivers and attorneys for receivers by our courts. There is not one receiver out of ten that is worth as an administrative representative of the court what the court allows him. These excessive allowances are a drain on the assets of the corporations that works hardships on the creditors and stockholders alike. Courts frequently have paid personal political debts with "fat" receiverships and have permitted acts on the part of receivers that were not for the best interests of the corporations they controlled.

Receivers' certificates should be issued very judiciously. Insofar as they exceed in amount the value of the productive improvements they pay for, they lower the value of the other securities of the corporation. But, on the other hand, insofar as dividends and interest have been paid out of capital and the plant allowed to depreciate without a reserve being provided, it is proper that bondholders and stockholders should bear part of the expense of liquidation and reconstruction.

In a simple receivership, conducted with the object of closing out a business, the assets are disposed of as quickly as is judicious and the funds so obtained are distributed equitably among the creditors. There is usually much waste in this process as properties offered at forced sale seldom bring what they are worth. Anything in the way of good will or "corporate excess," if there is any such thing at such a time, goes for little or nothing. Yet this is the most certain and satisfactory way of meeting the obligations of the corporation. If the corporation's loans and debts have not been far in excess of the tangible assets, there usually will be something left for the stockholders. In large corporations, however, especially where public interests are affected, as in railroads, from an economic and social standpoint the receivership takes on added importance. There are hundreds. perhaps thousands, of employes and many cities and towns depending for their prosperity on the continued service of the railway. It is not to be thought that such a corporation shall have its debts liquidated and itself be dissolved. In such instances the receivership is expected to continue the business indefinitely and to try to rehabilitate it. It may be said for such receiverships that they usually serve most efficiently to bridge crises, either financial from general business conditions or, as we more recently have had them, from too strenuous and injudicious regulation on the part of our law-making bodies, and at a proper time turn the properties back with a minimum of loss considering the circumstances surrounding their operation. Such receiverships maintain business and keep the good employes of the company and prevent all that loss of prestige that invariably ensues when a business closes down. They bring about an adjustment of debts and oftentimes make such improvements that the stock becomes a better investment than it was before the receiver took charge. The term "passive receivership" is used to designate those which merely preserve property, collect debts and assets and report the funds to the court for distribution; "active receivership" is used to designate that kind which manages businesses and conducts them as going concerns. An ancillary or auxiliary receiver is one appointed in a subsequent suit affecting the property of the same defendant, but instituted and pending in another jurisdiction. Such receiver usually is the same as appointed by the court where the original suit is pending. A provisional or temporary receiver, or receiver *pendente lite,* is one appointed to preserve the property in litigation while the suit is pending. Distinguished from this kind is the permanent receiver who is appointed at the time of the final decree for the purpose of executing the decree. In appointing a receiver the court thereby determines no right as between the parties and does not affect the title to the property in any way. Its decision upon the merits of the controversies involved comes later.

Several states have conferred by statute enlarged powers upon receivers for special purposes, making them practically statutory assignees. They are actually no longer receivers in the legal sense, though that designation still is used.

If there is some valid objection personal to a receiver, any parties in interest may petition for his removal. He then will be displaced by another by order of the court if the objections are sufficient. The charges against the objectionable receiver must be specific and properly set forth. When the proceeding, on account of which a receiver is appointed, is terminated, and the receiver has submitted his final report and accounting, then he is subject to discharge by order of the court.

PART IX.

TAXATION OF CORPORATIONS.

TAXATION OF CORPORATIONS.

Taxes are defined legally as charges or burdens imposed by legislative power on private persons, property and activities to raise money for public purposes and activities in which those contributing have an interest. What shall be considered public and what private activities is determined largely by enforcible public opinion. Taxation as an act of sovereignty must be performed so far as it conveniently can be with justice and equality to all; that is, it must be uniform. It is of the essence of taxation that there should be ability to compel the discharge of the burden by those on whom it rests; that is, taxation must be enforcible by authority other than that of the person taxed, otherwise it would be a voluntary contribution. It is also an attribute of taxation that it should be local, in the sense that to compel one community to pay charges properly resting on another community is an arbitrary and unauthorized exercise of power which amounts to confiscation of private property. The tax is distinguished from other charges imposed by governments in that there is no direct *quid pro quo* as between the taxpayer and the government. Taxes are distinguished from assessments in that they are impositions for the general revenue, while assessments are special and local charges on property necessary to pay for a public improvement, which confers a special benefit on the private property assessed. In the instance of an assessment, the charge is easily allocated in proportion to the benefit, and part, at least, of the amount of the tax usually is absorbed in added value to the property. Justice Cooley says, "Taxes differ from subsidies, being orderly and regular, and they differ from forced contributions, loans, and benevolences of arbitrary and tyrannical periods in that they are levied by authority of law and by some rule of proportion." (Boston, C. & M. R. Co. v. State, 60 N. H. 87, 88.) Public or social activity is shown in the provision of police and judicial organizations, in the building and maintenance of highways, streets, parks, bridges, sewers, public buildings, schools, fire departments, and sometimes in providing light, heat, transportation, etc. Government may make use of privately owned agencies in pursuing its function, as when it contracts with railroads and steamships to carry mail and parcels for its post office system, the public paying part of the cost in postage. When a governmental authority provides some service, such as is furnished by that class of agencies known as public utilities, as light, heat, telephone or transportation service, it charges a price, which follows private practice in being adjusted in proportion to the service rendered. Then that authority also charges fees for certain services, which fees are usually applied arbitrarily and not in proportion to individual benefit, for the regulative benefit thereof is usually for the community at large. The fees for recording in public depositories articles of incorporation, deeds and other documents, fees for marriage licenses, etc., are examples. Several fees are sometimes imposed on the same document, as, for instance, where articles of incorporation are filed with one or more officials of the state of its domicil, with a county officer and with officials of foreign states in which the corporation wishes to do business, in each of which instances the corporation must pay a nominal filing fee in addition to the incorporation fees imposed in the domiciliary state on the total capital stock and in the foreign states on the proportion of capital stock represented in their jurisdictions and, in some states, an annual franchise tax either arbitrary in amount or based on the total authorized capital stock, all issued and outstanding stock or that proportion represented in the state or otherwise. The price for the service of a municipally owned public utility is or may be a contractual matter, which differs from the charging of fees in that the latter is a compulsory charge. This is the usual distinction between prices and fees, though when the individual must buy his public utility service from a public plant which is without competition, he is compelled to pay for it if he gets it just as the man who wishes to get married must pay for his license. The corporation has been a favorite object of the application of fees and taxes on the part of the public, and it is the object of this division of the book to point out some of the tendencies to over-tax, some of the inequalities of taxation, to suggest a few remedies and to give corporation managers a basis from which to judge the fairness of tax charges applied to their properties as well as the desirability of suggested reforms in taxation in these changing times.

There are two opposite tendencies in the collection of taxes on the part of public authorities. The further authorities are separated from the people who pay, as in the case of state and national governments, the greater is the tendency to increase taxes out of proportion to actual needs. These authorities, contrary to the practice of private individuals, make their expenditures first and then arrange for funds to meet those expenditures. Congress, for instance, passes many bills providing for the building of public edifices, for maintaining public institutions of one kind or another, and for activities supposed to be for the benefit of the public. Many of these provisions are the result of the trading of votes —one congressman will support some other legislator's favorite project if the other legislator will reciprocate by supporting his bill for a new post office for some city of his district. Or it may be that a customs house or army post, useless from the general government standpoint, is maintained for purely local benefit because some congressman addicted to the "pork-barrel" can arrange it. Millions of dollars of government funds are thus disposed of annually for almost purely political reasons. The late Senator Nelson W. Aldrich made the startling declaration that the government of the United States could save $300,000,000 annually by efficient business administration. As much probably could be saved by efficient business management in states, cities and other local governments.*

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*It is worthy of note, on account of the correspondence of fig-

Funds uselessly appropriated must be raised by taxation in one form or another, and as corporations pay such a substantial per cent. of state and government taxes, it behooves their officers to take note of methods by which the taxes can be reduced. Aside from the tendencies of congressmen, who should be selected from among men who will prefer the public welfare to their own political standing among a constituency undeveloped in civic responsibility, the best means to secure reform in government expenditure is the advocacy of the budget system of public finance, where the needs of state and nation are carefully calculated in advance and only such appropriations are made as will provide for those needs.* It will be nearly impossible then for a legislator to trade on his vote or otherwise use his influence to spring an appropriation at almost any time to "sweeten" his constituency with some local building or monument that the consideration of the general welfare and the equal rights of communities will not justify. As corporate businesses are run on budgets prepared from studiously considered facts of business, so government business should be run. Briefly, the budget system of public

ures, that the report of the Bureau of Corporations on the taxation of corporations says that all the states of the Union collect from corporations about $300,000,000 yearly, not including amounts collected by local civil bodies such as counties, cities and towns. Railway, insurance and banking corporations contribute about forty per cent. of the total. Taking all the forty-eight states and the District of Columbia it is found that taxes paid by corporations constitute about forty per cent. of all revenues, the other classes of taxation contributing approximately as follows: general property, thirty-five per cent.; inheritance tax, nine per cent.; liquor tax, seven per cent.; other receipts, nine per cent. Some states, notably New Jersey, Connecticut, Pennsylvania, Delaware and Vermont, endeavor to secure nearly all of their revenues from corporation taxes.

*When, however, the Government is to buy property for public purposes, it is well to conceal its intent until an option on the property is secured, preferably in the name of a third party, as it is well known that prices are advanced exorbitantly when it is known the Government wishes to buy.

finance will give a continuous financial plan for the government; it will prevent the expenditure of more money than was intended by legislatures, especially by the practice of passing appropriations in many small bills, whose total exceeds in magnitude that contemplated by the legislators; it will prevent the intentional partial completion of a public project and the return of the legislator particularly interested in it to ask a further appropriation for the completion of the project; it will prevent the flood of miscellaneous appropriation bills rushed through inconsiderately just before the ending of a legislative session; it will tend to standardize salaries, maintenance and costs; it will place legislators and government departments on their merits and make their test depend on their business efficiency; it will furnish an intelligent and concise statement of government activities, the sources and expenditure of revenues, so that citizens can understand the merits and demerits of our financial operations, the equalities and inequalities of taxation and expenditure, in a way that is impossible under the present lack of system.

There is an opposite tendency in taxation where the taxing authorities are close to the people taxed, especially when the assessors are elective instead of appointive. A desire for political influence, so as to continue in office, makes the assessor quite amenable to the desires of the more influential of his constituency. As the pay of assessors is usually very low, incompetent men are the rule in filling these offices. Some of these men have prejudices against corporate capital, and it has not been unusual for corporate enterprises to be taxed out of all proportion to the taxes imposed on the other real and personal properties of the community. Nontangible properties rarely, in any community, bear anything like their proportion of taxes. The corporation is the more likely to suffer an inequitable burden if its owners are mostly nonresidents of the community in which its property is located. An assessor who can not understand and analyze a corporation statement is as likely to apply his valuation to a corporate property on the basis of the total capital stock, unissued as well as issued, as he is to the actual property values represented by the corporation. The right of appeal usually may be made to the tax board or commission of the next higher taxing unit, but the members of that unit may be as ignorant, as prejudiced or as subject to influences as the original assessor. As the subject of taxation is deep and complicated, it is unusual to find even on a state tax commission men of any considerable knowledge of the subject. It is true, of course, that officers and managers of corporations sometimes reap an advantage by imposing on credulous assessors through misrepresenting the values of their properties and so securing a lower valuation than is proper. Sometimes corporation officers who take an interest in politics secure an advantage through political influence. But the corporation is more often at a disadvantage than at an advantage in the application of values. The corrective for this state of affairs is in the personnel of taxing authorities, who should be paid better salaries, should serve for longer periods and should be selected from among men who have definite knowledge of values. It might be well to have our laws so shaped that specialists in different kinds of properties could be employed to place values on them for taxing purposes. This might, to some extent, do away with the necessity for an extensive classified property tax, especially where classification is desired because some kinds of property are at a disadvantage for the reason that they are overtaxed in relation to some other properties. The employment of especially qualified assessors in some of these lines would tend toward equalization. Another effect on corporate property, as on other property, as a result of too low taxes or of tax revenues injudiciously spent, may be seen in those taxing jurisdictions where public property, in roads, bridges, fire protection and the like remain unimproved or deteriorate because the community is too stingy or improvident to have pride in their proper condition. The factory, for instance, which depends on raw supplies carried over bad country roads in winter, would be at a disadvantage as compared with one so located that its raw material is easily accessible. Also, the factory in a community with poor fire protection is similarly at a disadvantage with respect to insurance rates. The attitude of a community as to tax rates and improvements is an important one for corporations to consider. In the case of municipal ownership of public utilities, the desire of local political administrations to stand well with the people is responsible for a tendency to lower the prices of the service of these utilities, oftentimes to the detriment of the capital investment. A proper consideration of this investment will provide in the charges imposed on consumers for interest on the capital. The charges for service here are easily allocated to consumers, but if the capital is not kept intact and the property is not kept at the point of efficiency it was when taken over or built, a subsequent tax on the entire community may be necessary for repair and replacement which to that extent does away with the distribution of charges according to the individual use of the utilities. If capital is raised by placing more bonds on a deteriorated plant, that raises the price of service to future users for the benefit of present users. Where charges exceed the cost of a service, the excess becomes a tax.

Corporation officials, managers, stockholders and creditors often think these governmental matters are too far removed from them to make effort at reform worth while. Yet these reforms are of the very essence of community prosperity and deserve particular and painstaking attention. Reforms in administration pointed out in the foregoing paragraphs would result in one of two things, or possibly both, lower taxation or getting much more in public improvements for the taxes paid. Notwithstanding the vast extent of our governmental activities, it is probably true that there are fewer men of constructive ability elected and appointed to public offices than are to be found connected with any one class of our leading corporate industries.

Without complicating this short discussion with too many economic subtleties, there are two general theories on which taxes are charged, that is; (1) they are charged on account of the cost to the community in performing a service, with the consequent benefit to the individual enjoying the service, and (2) they are charged from the standpoint of ability to pay. Several specialists in public finance practically discard the first theory in favor of the second, but a well-balanced judgment, both from the standpoints of theory and practice, demands that both theories have their place in a just tax system.* Peo-

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*Since this was written, there has appeared a tendency on the part of some authorities to think more highly than heretofore of the property tax under its classified form. Prof. Charles J. Bullock, of Harvard, for instance, said in his address before the Tenth Annual Conference (1916) of the National Tax Association, on "The State Income Tax and the Classified Property Tax": "The normal source of taxation is and always must be income. A property tax, whether general or classified, is merely one method of determining what part of his income the individual citizen should contribute, and it takes as the measure of the citizen's contribution the amount of property that he owns. The income tax is merely another method of doing the same thing, so that we can say that fundamentally the two taxes differ merely in the measure, or if you please, the yardstick, which they use in determining the amount of the citizen's contribution. * * * A general income tax levied as the general property tax is levied in American states would produce exactly the same results. Under it real estate incomes would pay the bulk of the taxes and other incomes in the long run would largely or wholly escape. * * * Central control of the process of assessment is necessary for the successful operation of either a property or income tax. * * * It is often said that a property tax is unequal because property is not equally productive. One investment of $1,000 may yield ten per cent., another four, and another may for the time being yield nothing; yet the property tax exacts the same contribution in all three cases, if the market value of the property is the same, as it may happen to be. The income tax, upon the other hand, proportions the contribution to the income that each investment yields, and is therefore much more equal. This argument is plausible, but it overlooks one important feature of the case. An investment that yields eight per cent. upon the market value involves more risk than one which yields four, and therefore a part of the higher interest is not net income, but a premium for risk. The purchaser of six per cent. securities must, if he wishes to keep his principal intact, allow for a larger percentage of losses than one who buys four per cent. bonds. Now the income tax makes no adequate allowple of equal ability to pay often impose widely different costs on government and receive widely different benefits. The theory of ability to pay, however, is in itself a considerable subject for discussion—a too considerable subject to give space to here. By some, property alone is considered an index of ability to pay, and when property is classified for taxation purposes, this idea is not far wrong. Suffice it to say, roughly speaking, the cost of government may be distributed among any number of persons with an approximation to justice in proportion to their several properties, but ability to pay may be superimposed on this theory so as to bring about a much nearer approximation to justice, though sometimes ability to pay alone should govern. When a company is unsuccessful, for instance, and where by proper management it has prospects of a successful future, there are usually the same reasons for reducing taxes as there are for reducing other fixed charges. The community is much more likely to benefit here by considering taxes alone from the standpoint of ability to pay than from any other standpoint. Take the instance of a railroad emerging from a receivership and in the position of having to rehabilitate itself in equipment and in business. It would be

ance for this fact. Even if it permits taxpayers to deduct losses as they occur, the amount of such deduction is limited to the amount of the taxable income of the year, or even more narrowly, whereas losses of principal may greatly exceed taxable income. * * * The previous argument takes for granted the ability theory of taxation; *and we must not forget that, no matter what place may be assigned to this theory no system of taxation ever was or ever can be based wholly upon the principle of ability.* We do not exempt urban real estate because the owner has been unfortunate in business and has no income this year. Business taxes do not exempt the merchant when his books show a balance on the wrong side. Taxation of real estate, and sometimes of business, is based very largely upon the principle that taxpayers have received certain benefits and must pay for them whether they pay large or small profits in any year. * * * The fact seems to be that neither tax [classified property or income] operates well unless administrative and other conditions are favorable, and that between the two there is very little to choose."

the sheerest folly for a state to assess it on the basis of the value of its property considered from a construction standpoint. The railroad then would labor under a burden that might send it into insolvency again and thus prevent the state from collecting from the road anything like the taxes it could collect if it assisted in fostering the road and in putting it on a profitable basis by considering only its ability to pay. Neither should a state forget its obligation to its citizens living in the communities through which the road runs. By keeping the road down those communities are deprived of transportation advantages which might help develop industries and thus add to the local and state tax revenues. In these matters, however, taxing authorities rarely see beyond their own noses. The special assessment of owners of real estate for improved sidewalks and roads or streets is an example of apportioning part of the cost in direct relation to the benefit received. In England this is known as the betterment tax. All of the benefit of the walk or street is not limited to its use by the person whose property it adjoins, but its benefit extends to all the members of the community who use it and indirectly to all the members of the community whether they use it or not. It is right, then, that the cost of improvement should be apportioned as nearly as may be to the benefit accruing to each property owner and that all the cost above that should be imposed on the community in proportion to their property and the ability of its members to pay. The same principle properly extends to taxation technically distinct from assessment. In the case of prices for public service, such as those paid municipal utilities for light, water, etc., the cost is allocated to the users in direct proportion to the cost and benefit. Fees for licenses are another example of the application of the principle of cost. However, licenses are frequently issued and charged for, not on the basis of cost to government and benefit to the individual, but they are issued for regulative purposes and the public is charged for the cost without any benefit. In most instances this cost does not amount to much, and there is no general indisposition on the part of the public to pay. Where, however, some particular lines of business are subject to special and substantial assessments for inspection which is mandatory and for the benefit of the public, there is good reason for the objections offered by the owners of these businesses that they are being taxed on their form or kind of business, which is likely to be as necessary to the community as other forms of business. The community approves the form of doing business by giving it the protection of its police powers and judicial resources, but at the same time discourages it or penalizes it by special charges. The inconsistency and injustice of this course are apparent. There are, perhaps, a few exceptions where special charges properly might be applied. Let us take an hypothetical case. A gunpowder factory is located in a community where little or no powder is used. The factory, uninspected, may be a menace to the community. It would not be proper to tax the small community for inspection of the factory, although the inspection is for its benefit and especially for the benefit of those of its members who work in the factory. It seems fairer to make the powder company pay the cost of inspection and let the incidence of the added cost of inspection fall on the users of powder wherever they may be located. The application of taxes to credits also amounts to the taxing of a method of doing business, as it does not tax wealth, but its representative. This is primarily true, however, only in the case of individual indebtedness, since an individual's property subject to taxation is only the surplus above indebtedness, and of that corporate indebtedness which is contracted for purposes of consumption or to meet pressing needs. Where, as in the case of many large corporations, especially railways, a mortgage debt is incurred for the purpose of furnishing capital to build the business properties or to enlarge or to improve the productive capacity of the properties, then it would be inequitable to exempt from taxation the mortgage indebtedness. Professor Seligman distinguishes between the two kinds of credit, saying, "Strictly speaking, the proper distinction is not between corporate and individual credit, but between production and consumption credit." In general, in the case of individuals, indebtedness diminishes the ability to pay taxes, while in the case of large corporations it increases the ability to pay taxes, because the debt is, in fact, part of the capital of the corporation. More is said of this under the paragraphs given to double taxation.

Property for taxation is variously assessed in different communities, sometimes at full value and sometimes at a fraction of its value, variously determined. There is practically a consensus of expert opinion that properties should be assessed at their full value, whatever the method of determining values. Assessing at a fraction or various fractions of value tends to obscure taxing situations, and, in this subject, where complexities are too numerous already, anything that avoids simplicity and accuracy combined should be eliminated. It is easier to obscure improper valuations where only a fraction of the valuation is taken for taxation. If full valuations are recorded, it is easier to see and determine inequalities. Psychologically, the importance of these inequalities may be minimized under fractional valuation. Where assessments are at fractional values, corporations have the same right to them as others. However, the influence of corporations should be on the side of full valuation not only because of the general reasons for its preference, but because the tendency is to tax corporations at a higher percentage of their full value than is true of most other properties. Securities in general should be assessed at their full market value. While real estate mortgages may be taken at par, since par always approximates closely the market price, corporation securities often are issued under or above par and their values may fluctuate widely because of changes in the corporate business itself or in the financial and business situation of the community or country. What is true here of corporation bonds is even more true of the shares of stock, since dividends are variable and inferior in their claim on earnings while interest is usually fixed and is superior. Therefore, appraisal at the full market value, which takes into account earning capacity and risk, is the fairest method of assessment. This method, however, may put corporate property at a disadvantage in comparison with property of an individual owner in that the assessment of stock and bonds at the market value includes intangible values not taken into consideration in the assessment of privately owned wealth. Efficient management and those elusive elements which may contribute to earning capacity and stability, all of which may be included loosely under the term "good will," are reflected in the price of securities, which is higher than the price would be if the securities represented merely the proportionate ownership of the tangible property of the corporation. This additional value is called the "corporate excess." In some states where corporations and joint stock companies are assessed locally or by a central authority on the tangible property, real and personal, there is added to this assessment the difference between value of the tangible property and the market value of the capital stock and bonds, which difference represents the corporate excess. In the smaller corporations whose stock is held closely and is not on the open market, so that its value is not subjected to public opinion, it is possible to conceal corporate excess and to keep an assessment much lower than it properly should be in comparison with other corporations though, perhaps, not lower than privately owned property. Where security values reflect public opinion as expressed in the markets and there is no good will or special skill in management, then the property of the corporation would not be assessed more than privately owned property. If the corporate property was inefficient in production and of bad business repute, the market price of the securities would lower the value of the corporation below that of the tangible assets.

There are several forms of corporate property, such as the railway, telegraph, telephone, express, pipe line, and palace car properties, that can not be assessed properly by local tax authorities. Proper assessments can be made here only by considering the properties as a whole. A central state authority should make these assessments, and then should apportion to each community that part of the total value represented by the mileage and property within the community.

Sometimes, however, real estate not used in the more ordinary and necessary business of the companies might be assessed locally. There is no good reason why this class of corporations should be assessed at a higher rate than corporate or other properties that are local, and this is provided for in some taxing jurisdictions, as in Wisconsin, for instance, where the rate of taxation is determined by making an average of the local rates throughout the state. There is an objection to the unmodified Wisconsin plan in this, that if we take, for example, a railway which has much valuable property in cities where tax rates are higher, that property is underassessed with relation to other properties in the cities. This can be adjusted, however, where a central authority is permitted to readjust the rates with reference to such property. If rates for service were not regulated by the Interstate Commerce Commission and other authorities, and it were possible to shift the incidence of the tax to the patrons of these properties, it would not be proper to do so. A rational public policy is all in the interest of fairness to these properties, on which so much of our other prosperity depends. As to the separation of state and local subjects of taxation, where the state reserves for itself certain classes of property, public utilities or other classes or kinds, there is no good reason for discarding the principle of equality for all properties, those locally and those centrally assessed. There is one particular objection, from the standpoint of the larger corporate businesses, to separation of sources of revenue for local and state purposes. Where separation occurs, it is the public utility class of corporations whose tax revenues usually accrue to the state. Unless there are proper safeguards, the legislatures of states separating the sources might make large appropriations for the general benefit and the corporations might be greatly overassessed to meet such appropriations. The people, deriving a benefit without paying their proportionate share of cost, might not be inclined to assist the corporations in getting a proper reduction. The representatives of all the people are permitted to spend what comparatively few of the people contribute in taxes for state purposes. In making separate interests for different classes of property there is more opportunity for inequality and injustice to hold sway than where all classes have the same interests. Separation also works against a wise public policy in that it is likely to bring corporations more into politics and to furnish the excuse, which often will be just, that they must maintain lobbies to protect their interests. The origin of the theories concerning separation was both in the fact that some properties are difficult to assess properly in fractional parts by local authorities, and because, when state taxes are imposed by adding the state assessment to that of the local unit and collecting from the same property, there is a tendency of the local units to underassess their property so as to gain an advantage over neighboring communities. The financial dilemma in which states occasionally have found themselves because of this tendency has given rise to such separation of state from local taxation as developed in the inheritance tax and the motor vehicle tax. So far as the inheritance tax is concerned, corporations are not concerned in it, except in those states, some ten in number, which tax the intangible property of non-resident decedents. These incorporating states practice robbery of the dead who owned stock in corporations of which they are the domicils because they can prevent a transfer of the stock unless the tax is paid. This taxation is, of course, another instance of taxing the form of doing business and, where an inheritance has been taxed at the residence of the testator, is a reprehensible form of double taxation. It has been argued that separation removes the difficult task of equalization, but this is not true. It may alter some of the conditions of equalization, or it may render some of them less important from the general standpoint while magnifying them from the standpoint of some of the classes of properties, but it does not render equalization less desirable or important from the standpoint of essential justice. The first tendency of separation is to secure a complete and expert valuation of large corporations while much or most of the other property of a state remains to be valued by comparatively ignorant local authorities, who, on account of the circumstances of their selection and for other reasons, often undervalue it. Even where the centralized authority appoints local assessors, their ability, though honestly exercised, is likely to be much less than that of the experts who value the large corporations. When the California State Board of Equalization in 1912 instituted direct appraisement of properties taxed for local purposes to determine the relation between taxes on such properties and those on the gross earnings of corporations, the appraisers usually were residents of the counties in which they worked. A commentator on this situation says, "They probably all knew the purpose for which their valuations were being made and consequently in all likelihood their valuations were conservative. The operation by which the local property was appraised looks very much like self-assessment. It should go without saying that the judge and the judged should not be the same. The method of valuing the property subject to local taxation resulted in a conservative valuation, while the method employed in the appraisal of the property of the public service corporations [largely the stock and bond method] admittedly led to the highest valuation that could be reached by any approved method of appraisal." Large corporations are interested therefore in the complete assessment of manufacturing plants, stocks of merchandise (the average stocks carried during the year, not those reduced at assessment time), large land holdings and mines and mining resources. Separation shifts the equalization from that between counties to that between property taxed for local purposes and property taxed for state purposes. As noted above, this shifting also shifts the interest of the owners of the classes of property taxed, and this may cause another tendency on the part of those taxed locally only for local purposes: certain purposes sometimes considered local or handled more or less locally—schools, roads, charities, mothers' pensions and others—may be grouped and turned over to the state so that the state's activities and expenses may be increased, and the properties taxed for state purposes will have to bear the burden. In shifting equalization between the counties, the tendency is toward higher local taxes, and the increase is not so apparent in the absence of inter-county equalization. There are other defects in separation, but further space can not be given to this subject. Partial separation, so that the people at large are not wholly relieved from state taxes, seems to obviate to some extent the disadvantages of complete separation. A state board of finance, such as Connecticut has, or a state board of public affairs, such as Oklahoma has, may serve as a check on extravagances and ill-advised appropriations, especially in lessening the power of appropriation committees in legislatures when those committees are inclined to trade appropriations for legislation their members desire. Separation, like most other phases of taxation, depends for justice and effectiveness on the safeguards that are thrown about it and the manner of its administration by the proper authorities. Saner opinion seems to be that property extending over several counties or states should be assessed and the valuation apportioned by a central authority of wide jurisdiction, while the properties should continue to be taxed locally.*

*The report of the State Tax Commission of California (1917), which arrives as Modern Business Corporations is going to press, says that the amendment to the California constitution which accomplished the separation of sources of state and local revenue has not resulted in equality either as between corporations and the people or as between the various classes of corporations, an investigation by the commission demonstrating clearly that the little corporations are taxed far more heavily than the big corporations; that it has not, as its advocates promised, tended to correct the evils of undervaluation by counties, assessment at full value being just as remote today as it was prior to the adoption of the amendment; that it has not lightened, as was predicted, the burden upon real property; that it has complicated the tax system; that it has taken away from counties and cities the right to receive a proper measure of tax from property having its situs in the community where that property derives benefits; that, as the different localities differ much in the percentages of property withdrawn for state purposes, the amendment works a grave inequality between communities in the amount of revenues their properties contribute for

Where there has been separation of the sources of taxation for state and local purposes, public service corporations are interested in the complete assessment at full value of all properties taxed for local purposes. They are interested in

state purposes; that it segregates properties of the same character and in the same community and taxes the two classes of property so formed for separate and distinct purposes, preserving no relationship between the two on the basis of local benefits and needs; it has deprived the people of the state of an interest in the state expenditures and has placed the burden of holding down the expenses of the state on the shoulders of the Governor. The report says some device is needed to restore the people's direct, pocketbook interest in state appropriations. Because there were no adequate tax limitation laws, the total separation plan has, in the matter of local expenditures, increased the tax burden over what it would have been under the old method. The property of public utility corporations is now exempt from local taxation, so they are benefited by every dollar expended for local improvements without contributing to local revenues. Even in the matter of ease of administration of the tax from separate sources, the principal point usually urged in favor of separate sources, the California report says that an objection to the separation system in that state arises from the fact that it is confusing, expensive and extremely unsatisfactory to continue the attempt every two years to equalize the burden of tax borne by public service corporations and that borne by locally assessed property. The report suggests the only way permanent relief may be accomplished is to have both classes of property taxed on the same ratio of value, which should be a full value at the situs of the property, through a central control of assessment. The benefits of separation in California according to the report have been that it has demonstrated that certain classes of property separated for state revenues can be taxed properly only when they are assessed by a central system of valuation, and that local assessment of these classes is "inadequate, inequitable and productive of economic and political dangers." Also, it has produced additional revenues from values which formerly were not assessed or which were under-assessed before separation was adopted. The report further says that the one principal argument advanced in favor of the present California system is that it has produced enough revenue for state purposes, but that "it is a weak argument for any method of taxation merely that it raises enough revenue. There was no trouble as to amount of revenue under the old system."

this from two standpoints, first because corporate properties are appraised more generally for taxation at their true value, without deductions, than general private properties locally taxed, and, second, because the omission of property, under-assessment and deductions result in higher tax rates. When these inequalities prevail, the corporation is hit hardest and with great injustice as compared with other classes of property. Where there is no separation of sources of revenue, a local tendency to overassess corporations has the same results, working injustice both from the standpoint of the comparative taxation value and from that of the tax rate.

The question as to whether public service corporations should be taxed, seems to have been settled in the public mind in the affirmative. Whether they are privately or publicly owned makes no difference, for the exemption of utility properties either relieves them from their fair share of the cost of government or, by reducing the tax revenues, benefits the users of the utilities at the expense of those taxpayers of the taxing unit who do not use the service of the utilities. Where the utilities are taxed, the tax is added to the expense of operation and its incidence is on the consumer. It is estimated the value of public utility property in the United States is in the neighborhood of nine billion dollars, which would be a tremendous amount to exempt. In this connection it has been suggested that public utilities should be assessed for taxation by public service commissions, which are in a position to have ready access to their values as determined by experts, and that they co-operate with some centralized power, such as state tax commissions, who will review and equalize these assessments with those of all other classes of property in their states, preferably by full but carefully and expertly determined valuation of the other properties. There is an objection to this, however, in that valuations for the purpose of rate regulation are not the same as valuations for purposes of taxation and public service commissions might not be inclined to shift their point of view and would tend to identify the two. It is held by some economists that tax valuations should be higher than rate regulating valuations for successful public utilities, while they should be lower than rate regulating valuations for unsuccessful public utilities. Identification of the two would tend to raise the tax valuation on unsuccessful public utilities and to lower it on successful utilities. Then, too, owing to the adverse criticism and antagonism that might occur in the case of that commission which assesses as well as regulates rates, it might be hampered in its regulative function if it attempted both responsibilities.

Let us consider whether those people who associate themselves together to do business under the corporate form receive such advantages from the state's franchise granted to them that their ability to pay is increased over that of others who do business in some unincorporated form; also, whether the advantages given by the state are returned in equal advantages to the community. The chief advantages of incorporation are legal individuality or juristic personality, continuousness, the possibility of raising a large capital through the contributions of many small shareholders and also of securing much greater amount of funds than it would be possible to secure even from a few rich individuals, and limited liability. All these are equally advantageous to the community. In the case of juristic personality and continuousness the equal advantage is very apparent and the possibility of almost indefinite division of interests and with limited liability enables small investors to share, with definite knowledge of their financial responsibilities, in profitable enterprises which would be beyond their financial reach as individual proprietors. It is generally recognized that the state should encourage large corporations that are beyond individual enterprise, as they contribute most largely to the general prosperity while they work no corresponding disadvantage to the people in general. Those who deal with corporations know of the feature of limited liability and conduct their business with the corporations taking that feature into consideration.* As will be pointed out under the subject of double taxation, the corporate form gives some superior advantages in business management, but there is no question that as corporations now are taxed they pay more in proportion than they receive in the advantages of incorporation, more than their increased ability to pay and much more than they add in cost to the government; that is, as a rule they are overtaxed as compared with individuals owning property and engaged in business affairs. A reason why they have not been at greater disadvantage on account of this overtaxation is because of the tendency of all the larger businesses to incorporate so that there is not much competition between incorporated and unincorporated businesses in these classes. It is true, as some have argued, that in those communities where there are excessive taxes on corporate borrowers, these corporate borrowers are enabled to get money on bonds at a lower rate of interest because it is a common habit in such jurisdictions for those who buy the bonds to evade the tax on them. The bondholders, therefore, are willing to take less interest. But this evasion of the law on the part of the lenders does not in any way modify the principle involved. If a properly small tax on the corporation securities were imposed, the corporations would be able to borrow at practically the same rates as under the foregoing circumstances, and the additional revenues accruing to the taxing unit would tend to lower the tax rate. Besides paying the usual property tax such as is imposed on individuals, the corporation also usually pays on its "corporate excess," discussed elsewhere, which, as a rule, is not included in the assessment of businesses conducted

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*"A business corporation consists of one or more persons authorized by law to use the name and trade at the risk of another

person. This other person is an artificial one, into the hands of which is placed the precise amount of moneys which those who compose it are inclined to put at hazard. If it uses its talent well and makes a profit, they share it among themselves. If it proves an unprofitable servant and can not pay its debts, they lose, under the principles of the common law, only their original investment, and its creditors lose the rest. Nor is this unjust, for the creditor knew from the first that this artificial person could bind no one but itself." From "American Business Corporations Before 1789," by Simeon E. Baldwin, LL. D., in Vol. I, Annual Report of the American Historical Association, 1902.

by individuals; it pays also an organization fee in proportion to the capital stock provided in the articles of incorporation, then certain nominal filing and certificate fees, sometimes an annual capital stock tax and franchise taxes, and the federal income tax. Those who argue historically for special taxes on corporations, citing the ancient trading companies, seem to forget that those corporations enjoyed exclusive trading privileges and freedom from competition, which our general business corporations do not enjoy.

It has been maintained at times that properties of public utility corporations should be taxed at higher rates than general property because of the special franchises given such companies by the state. These franchises, however, are not granted so that the corporation may follow its unrestricted will as private persons and many other classes of corporations are practically allowed to do. There remains the expressed or implied reservation of right on the part of the government to regulate and control these organizations for the public interest and security (California v. Southern Pac. R. Co., 127 U. S. 40, 32 L. ed. 157). This largely offsets the special privilege. And in any tax method on the *ad valorem* basis modified by either specific valuation by the stock and bond method or by the gross or net income method, the value of the franchise is included in the assessment necessarily by reason of the method employed. An analysis of the franchise as property to be taxed shows that it has been greatly overvalued in the past. As a matter of fact, the organization fee paid the state is a sufficient consideration for all the benefits received through a franchise without any further taxation whatever, except a nominal annual tax for administration. When corporations, as corporations, are required to pay in addition to their property tax a franchise or other special tax not required of natural persons, such additional tax is discriminatory, excessive taxation.* In some states, Massachusetts, for instance, the annual franchise or license taxes are based on the amount of authorized capital of the corporations doing

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*The excise tax originally was an indirect tax, an internal impost or tariff. It was applied variously, both to bring about equality in taxation, as is seen in the ideas of Hobbes, Petty,

Colbert and of others also in Germany, France and Italy, which were those of putting a single tax on the expense of all the people, rich and poor, particularly to reach the nobility, clergy and wealthy citizens who were exempted largely or wholly from land taxes and other tax burdens, and, on the other hand, to throw burdens from the landed proprietors on the poorer classes by taxing the necessities of life, an inequitable performance, as was the case in Holland in the sixteenth and seventeenth centuries. In America the term "excise tax" is applied to a special direct form of taxing corporations on their earnings, or otherwise in addition to their property tax. Although this tax is not justifiable on the strictest grounds of equity, there is sufficient good reason for it in the "ability to pay" theory that it is justifiable in many instances, especially where there are extraordinary and unusual public expenses to meet and where additional tax burdens on small private property holders of low income would be oppressive. The general public good is the measure of the extent to which this special excise tax should be imposed, both from the standpoint of raising additional revenues and from that of relieving the oppression of small property holders. But in measuring the public good, it should not be forgotten that any member of society, however little he may own, is benefited, and the public also, by his willingness to pay according to his ability. However, just as in times of national calamity and other times of special and strenuous need, the wealthy are expected to contribute liberally to relief funds, so, according to the theories of the support of the state, there are times of unusual expense when ability to pay should take precedence over benefit as a basis of taxation. The difficulty of applying the excise tax in this way would lie in the active legislation needed to pass tax laws and to repeal them according to the necessities of the time. As this is somewhat impracticable, and as there usually are "extraordinary" state expenses, increasingly so, it is easy to justify permanent legislation of this kind. Such justification, however, does not include the distinction in the application of such taxes as to the different forms of business conduct, such as the corporation from the partnership, as the earnings of businesses have little to do ordinarily with the legal form under which they are conducted. In 1916 Massachusetts passed an income tax law applicable to every inhabitant of the state, including partnerships, associations and business in the states regardless of the amount of property located in the states or of business done there. Although such taxes are small (one-fiftieth of one per cent. in Massachusetts), it will be seen what a burden this might be on any class of corporations doing a small business in all the states if all the states had such laws. The right of foreign states to put such taxes on foreign corporations is based on the rule of law that a state has the absolute right to prescribe the terms and conditions upon which a foreign corporation may engage in intrastate business within the foreign state, and that the foreign state may, if it sees fit, exclude altogether a foreign corporation from doing business wholly within the state. In the case of the S. S. White Dental Manufacturing Company v. Commonwealth of Massachusetts, 231 U. S. 68, 58 L. ed. 127, the general rule has been modified somewhat: "The right of a state to exclude a foreign corporation from its borders, so long as no principle of the federal constitution is violated in such exclusion, has been repeatedly recognized in the decisions of this court, and the right to prescribe conditions upon which a corporation of that character may continue to do business in the state, unless some contract right in favor of the corporation prevents, or some constitutional right is denied in the exclusion of such corporation, is but a correlative of the power to exclude." In the case of the American Smelting &c. Company v. Colorado, 204 U. S. 103, 51 L. ed. 393, the United States Supreme Court held that when a state has admitted a foreign corporation to transact business within the state on the same terms and conditions as those put on domestic cor-

trusts. Corporations paying the franchise tax are exempt from this tax. The income tax, as a business tax, as well as a personal tax, is easily justifiable, but it should be applied to business generally. It may be said that, as often in times of national calamity, those who have property to protect by insurance must pay higher premiums for the benefit of the protection, so in times of extraordinary expense, either protective or simply improving in nature, those who must pay higher taxes because of large property interest are actually paying under the benefit theory rather than under the theory of ability to pay.

porations, it can not thereafter impair its contract by subjecting the foreign corporation to greater tax burdens than were imposed on its domestic corporations. Also, in Southern Railway Company v. Green, 216 U. S. 400, 54 L. ed. 536, it was held that when a foreign corporation duly obtains authority to transact business in a foreign state, and, relying on such right, acquires a large amount of property in that state, the state can not impose thereafter upon such foreign corporation a privilege or franchise tax not imposed on domestic corporations doing the same kind of business. The United States Supreme Court also has held in several cases reported in 216 U. S. that a franchise tax against foreign public utilities corporations is unconstitutional and void on two grounds: (1) That the tax is a direct burden on interstate commerce, and (2) that the tax is an attempt to tax property beyond the jurisdiction of the state. In the White Dental Company case already referred to, however, the court upheld the Massachusetts excise tax law. It would appear, therefore, that while a state may not tax a public utilities corporation engaged in interstate commerce on its authorized capital for the privilege of transacting business as a foreign corporation within the state, it can so tax other classes of corporations regardless of the amount of capital stock employed in the state. A state which taxes corporations in this manner must necessarily, then, discriminate against foreign private business corporations in favor of public utilities corporations, since such a tax against the latter could not be sustained. From an economic standpoint, regardless of current judicial decisions, such a tax as the foregoing is unjust and inequitable and doubtless finally will be found so by our courts. Aside from the inequitable features mentioned, the authorized capital stock of a corporation has no relation to its actual value, so that great inequities might arise as between corporations whose stock was of a value several times greater than the authorized capitalization and those whose stock was of a value only a fractional part of the authorized capital, assuming that all the authorized capital stock in the corporations were issued. Then there would be the further inequities as between those corporations all of whose authorized capital stock is issued and those only part of whose authorized capital stock is issued. Then comes the situation of which the court took cognizance in the public utilities cases, that the authorized capital represents the entire property of the corporation, that located within and outside of the foreign state, and that taxation of the whole authorized capital stock is taxation of property located outside the jurisdiction of the state. In several cases, however, it has been decided that a tax on the franchise of a domestic corporation is valid when the value of the franchise is determined by the gross receipts, part of which are derived from interstate commerce (15 Wall. 284; People v. Wemple, 117 N. Y. 136; Maine v. Grand Trunk R. Company, 124 U. S. 217). Professor Seligman points out that the conception of the franchise is legal and not economic in origin, and that a tax on franchises is a tax on business. "In an economic sense," he says, "the franchise tax means nothing at all. It is so utterly indefinite that it defies exact analysis." However valuable it may be to the lawyer in the effort to evade certain constitutional restrictions, "to the student of the science of finance it is a useless conception." He points out that the franchise tax as a property tax, which was devised to fit a concept based primarily upon earnings or income into a system of taxation based on property or capitalized income, is a mere piece of guesswork, leading to arbitrariness and furnishing no opportunity for effective redress on the part of the taxpayer; also that the franchise tax as a non-property tax was devised to overcome the still remaining difficulties of a property tax, and that it is a mere makeshift or legal subterfuge. He continues, "Both kinds of franchise taxes furnish eloquent testimony to the shortcomings of a tax system where the criterion of ability to pay is still made to reside in property rather than in product or income. For all the manifold complications and litigations that attend the American franchise tax are unknown elsewhere in the world where the general test of faculty in taxation is considered to be an income rather than property. The problem of the franchise tax is part of the problem of the general property tax; if ever we shake off the incubus of the general property tax theory, as we are bound to do in the not distant future, the entire problem, and the conception itself, of the franchise will disappear from the realm of taxation." The writer regards the franchise tax as part of the general property tax that should be dispensed with as regards general business corporations. Only where special classes of corporations are relieved from competition by having exclusive franchises should there be any application of a special franchise tax. Even then it is a question whether the patrons of such public utility corporations should not have the benefit of the special assessments in lower rates for service.

Franchise taxes are of different kinds from another standpoint. There is the franchise *to be,* that is the franchise associated with the creating of a corporation; the franchise *to do,* or to continue to exist and transact business under the corporate form; then there is the special franchise, or right to exercise special privileges not granted to corporations in general, such as the right to use the streets and highways by public utility corporations, such as the laying of tracks by street railways and interurban companies and the erection of poles by telephone and telegraph companies. The United States Supreme Court, in defining a franchise, says, "A franchise is a right, privilege or power of public concern which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security" (California v. Southern Pacific R. Co., 127 U. S. 40, 32 L. ed. 157). Professor Seligman, in his Essays on Taxation, holds that this definition is too narrow, as it emphasizes unduly the element of public control and public interest. "These are, indeed, very desirable adjuncts," he says, "but they scarcely seem to be indispensable parts of the conception." Nothing is more common than the possession by a purely private corporation of a franchise—for example, the mere privilege to act as a corporation. Furthermore, a privilege of a public character, like that possessed by a railway, is not necessarily confined to corporations. Thus, there is nothing to prevent the grant of a right of eminent domain to private persons. We therefore conclude that a "franchise in the wider sense is a 'right conferred by government of conducting an occupation either in a particular way or accompanied with particular privileges.' The motive may be either public welfare or * * * public revenue." Blackstone defines a franchise as "a royal privilege or branch of the King's prerogative subsisting in the hands of a subject." Franchises in earlier times were granted to secure royal favor in business and exploits, to obtain special and exclusive business and jurisdictional rights of many kinds, largely for the revenues accruing to the crown.

In some respects, on strict analysis, our franchises have some of the character of the ancient franchises and, particularly as they are used under the legal conception, are inconsistent with the principles of democracy. From what has been said of the application of franchise taxes to foreign corporations and from what is later said relative to double and multiple taxation, it will be easy for the reader to come to conclusions with respect to the application by the states of franchise taxes to corporations of which they are the domicil.

It may be worth while to review very briefly for those unfamiliar with methods of taxation the practices of assessors with particular reference to corporations and the economic theories and laws on which the practices are based. The general property tax is the early form of taxation of property on its actual value or a certain proportion thereof by local assessors. In the case of corporations having much property beyond the reach of any given assessor, which the railway will serve to illustrate, their property, corporate, realty and visible and invisible personalty, is assessed in small sections by all kinds of assessors having all kinds of notions as to valuation. This form is theoretically out of date and is diminishing somewhat in importance and practice under new views of the subject. The framers of constitutions and laws under which the general property tax came into existence meant well, but as these constitutions and laws have been too strictly construed by judges as ignorant of theories of taxation as the framers themselves, there seems to be no actual relief except in passing new laws and amending the constitutions. The Indiana Constitution, for instance, reads: "The general assembly shall provide by law for a *uniform and equal rate of assessment and taxation;* and shall prescribe such regulations as shall secure a *just valuation* for taxation of *all property,* both real and personal, excepting such only, for municipal, educational, literary, scientific, religious or charitable purposes as may be especially exempted by law." The Indiana courts have held that exempting property from taxation (and this has been done in instances which could not properly come within the classes of exemptions mentioned in the constitution) does not classify properties, but that to make a low rate on certain classes of property would be unconstitutional. In practice, the Indiana tax commission modifies the strict interpretation to some extent, but does not modify it sufficiently to secure even approximate justice in many instances. On railways it checks up with the valuations of the public service commission for rate making and sometimes takes into consideration the percentage of taxes to gross profits. Professor T. S. Adams, of Yale University, says in the Proceedings of the National Tax Association (1915), "I believe that the identification of tax valuations and rate valuations is particularly vicious because I believe that tax valuations should be higher for successful public utilities than valuations for rate making and that, per contra, tax valuations for unsuccessful public utilities should be lower than valuations of the same utilities for rate regulation." Hastings Lyon, another tax authority, in his Principles of Taxation, says, "Whatever reasons there may be for making elaborate physical valuations of public service properties for consideration in determining rates by public service commissions they have no application to the matter of taxation." It happens that this mixture of the general property and income methods, not bad in itself, applied as a rule by a board the majority of whose members know little of the subject of taxation, and applied at random more or less, results in the wide variation of tax returns from various properties and in the paying by some unsuccessful railway corporations of more taxes in proportion to their gross earnings than some of the successful railway corporations. There are in the instances of most corporate properties, however, a crude approximation to justice, but it is apparent that, to secure "a just valuation of all property for taxation" the constitution, as it has been interpreted, needs to be amended and adequate laws need to be passed as a more elastic working basis for members of a state board and local assessors appointed more with regard to their knowledge of taxation than to their political services. The general property tax is often confiscatory of income and has too many apparent disadvantages to make it justifiable as a sole basis of taxation. Like it, but worse, taxation on the basis of the cost of property, which may have no concern whatever with present value, is inadmissible as a system. The *ad valorem* system is a variation of the general property tax system, the valuation of the property in the case of large corporations—railways, for instance—being made by a state board on the property as a whole, by adding the real and personal property, including the franchise, and not on small parts of it variously located. This system is much superior to the general property tax. It approaches much nearer "equality of taxation," which term, however, needs definition before it is taken as a standard to measure justice in taxation.

The system of taxation of capital stock at its market value leaves out of consideration the fact that all the property of a corporation may not be covered by the stock and that the market value of a stock may not bear any relation to the corporation's earning capacity, as, for instance, when it is a speculative stock on an exchange or when it is being bought for control. Bonds may represent a large part of the productive capital of the corporation. The taxation of capital stock at its par value is open to all and more objections applicable to the foregoing. Besides, some shares now are issued without a par value, as in New York. Taxation of capital stock and bonds at market value is a better system, but is open to several objections—the market value of bonds depends not only on their income, but also on their length of time to run; the tax returns, where stock and bonds are owned outside of a state, will accrue to the state where the property is situated rather than to that where the owners live; where there are no dividends paid on stock and it has a speculative value, that value will not likely have any relation to earning capacity; the tax on bonds is applicable only to residents of the state and therefore that part of the property represented by bonds owned outside the state goes untaxed.

Taxation of business transacted is a crude way of measuring the success and profit of a business and is inferior to other methods mentioned further on. Taxation of capital stock in proportion to its dividends or of the dividends themselves (there is a legal difference unimportant from the economic standpoint) is objectionable principally because it makes inequalities as between corporations having only capital stock and those having both stock and bonds. It takes into consideration only part of the earning capacity.

This leaves only two other methods, taxation on the basis of gross earnings and taxation on the basis of net earnings. These methods are more in harmony with the later faculty or ability to pay theory of taxation, which several economists think should supplant the benefit theory entirely. Differentiating taxes, as revenues strictly for the common social benefit, from fees, assessments, licenses, prices for public service, and other items in a classification of public revenues, which these economists do not consider to be taxes at all, the ability theory gains in plausibility, but can not, it is believed, even then establish itself as an exclusive and adequate theory. However, as to its importance in the economic search for justice, there is no question that it deserves a high place and most important consideration, particularly as a business tax. Its importance lies largely in the fact that in the larger proportion of instances where taxes are applied to property, the owner of the property advances the tax, but charges it up to the users of his property, or of the products of his property, so that the incidence is not in the property owner himself. This is a continuous tendency, which the earnings, income and inheritance tax systems help to overcome. Since the individual is part of a group or society of individuals on whom he tries to shift his burden, and since these systems keep him to some extent from doing so, these systems are known as social instead of individual systems of taxation. It is believed that a further classification of property can be made so that the individual benefit theory of taxation will be confined to its proper sphere, where the tax is not shifted by the person who pays it, and the ability and social theories will be left to operate in their fields. In other words, in any complete system of taxation the property, or *ad valorem* and income taxes will be regarded as supplementary and not as mutually exclusive. In assessing on the general or classified property theory, the income method may also be used as an auxiliary method. This does not go into the questions of minimum sacrifice and equality of sacrifice or other phases of the consumption theory in their relation to the ability theory. The gross earnings tax is what its name indicates. In Connecticut, which raises most of its state revenues by taxing corporations, there is in lieu of all other state taxes a tax of three and one-half per cent. on the gross earnings of steam and electric roads, four and one-half per cent. on those of street railways, and two per cent. on the net income of general corporations. Various railroad tax commissions have approved the gross earnings plan of taxation. It is easily calculated and has an advantage over the net earnings tax in that it can not be evaded. It is not, however, as accurate a tax as the net earnings tax considered from the standpoint of ability to pay. It does not consider the expenses of the business taxed. It does not take into account original cost, risk incurred or current expense. A railway may have cost three times what it cost to build a competing road. Its gross earnings therefore must be larger in order to make a corresponding net profit. It is obvious, too, that gross earnings do not bear any fixed relation to net earnings. A glass manufacturing plant in a gas or coal field can secure lower priced fuel than one located outside of such a favored spot. There may be natural advantages which will make a large difference in the net profits of two plants of equal gross earnings. It is not so apparent to the writer as to some that the gross earnings tax puts a burden on good management. Take two plants of equal gross earnings and equal advantages, but give one plant a keen, shrewd manager who buys economically and otherwise manages the plant so there is a larger margin of profit. The gross earnings of the plants may be equal. But the net profits to the well-managed business are much larger. If the businesses were taxed on net earnings, the well-managed plant would pay the larger tax. It is inconceivable that, under these circumstances, the shrewd manager would prefer the net earnings tax to the gross earnings tax, if the rates were proportionately the same. In a competitive way it would be disadvantageous. On the other hand, good management or natural or artificial demand may lead to a considerable increase in business and the additional business may not yield as much proportionately in net profits as the smaller amount of business. In many businesses the expense of operation or production above a certain point increases in greater proportion than below that point. It may be good management or other circumstances that brings the business beyond that point. In any event, the tax on gross receipts taxes to some extent that inclination of the manager of the business to increase his business above that point which is proportionately most profitable. He might consider that the necessary exertion on his part, and on that of his force, was not worth the smaller additional profit. Several states, believing that the gross earnings tax is not equitable without modification, have graded the gross earnings tax on railways so that the rate per cent. increases with the gross earnings. Without a corresponding increase in net earnings, it is apparent that more injustice than justice could be accomplished by this system. However, it is a principle of railway economics that density of traffic is one of the chief elements in determining cost and that the more business done, the lower the cost in performing each item of business. From this standpoint, such a graduated tax is probably justifiable. Although the gross earnings tax is economically a clumsy method, its advantages from an administrative standpoint are such that now it generally is considered effective and desirable.

The net earnings tax is the most perfect tax, from an economic point of view, applicable to corporations. It is capable of being applied in exact proportion to productive capacity and ability to pay. It is apparent that, theoretically, it is superior to the gross earnings tax. But, in its administration, there are difficulties that are hard to overcome as to corporations doing an interstate business and with branches of the income producing property located in different states. Take the case of railway corporations with heavily mortgaged leased lines and branches in several states. It would be to the interest of these corporations so to handle the traffic and business of these lines that they will earn little or nothing above the fixed charges. The profits will then accrue to the principal and lessor company and the states in which the subsidiary companies and leased lines are located would be kept out of their just proportion of taxes because there would be no net earnings. As all these roads would have gross earnings, there would be no difficulty here in administering the gross earnings tax. The Ontario Commission on Railway Taxation, the California Commission on Revenue and Taxation and the Virginia Tax Commission in their reports all agree in this opinion. When corporation accounting has been so developed and systematized that the ascertainment of net earnings is an easier and less costly matter, then perhaps the ideal system of a net earnings tax will be more practical when applied to the larger interstate corporations. It may be remarked incidentally that the Ontario Commission maintains that it is impossible to tax equitably private property and corporate property on the same basis and that there is no necessary injustice or inequality in taxing them upon different principles and by different public authorities. "In fact," the report goes on to say, "it is the attempt to tax them both upon the same principle which works injustice and inequality, and it is only by taxing them upon different principles suited to each form of property that it is possible to attain to approximate justice and equality." The equalization, then, as between the two classes of property is merely a matter of the rate of taxation. Difficulties in the way of determining net earnings are to some extent removed as to intrastate public carriers by the state commissions' use of the system used by the federal commission. The definition of net income in the federal corporation tax of 1909 is commonly accepted except as to two points, the deductions for taxes and for interest on debt, which economists think should not be allowed. Another objection to the net earnings tax is that the books of the corporations may be doctored and the net profits be divided as salaries, expenses, etc., leaving little or nothing to be taxed. As this objection has little weight except as applied to those corporations where stockholders, officers and managers are one, it is negligible. Another objection is that corporations frequently have no net earnings while government requirements continue as usual. The total corporation profits are fairly regular and dependable, however, but measures can be adopted to prevent the escape of any corporations from all taxation whatsoever. In Austria, for instance, a minimum tax is provided in relation to the stock and bonds of corporations whether there are any net earnings or not. In Europe generally the net earnings tax is in vogue and is found to be the best system.

Professor Seligman says, "The difference between the earnings system and the *ad valorem* system is the difference between publicity and secrecy, between certainty and arbitrariness, between simplicity and complexity, between precision and guesswork—in short, between modernism and medievalism." To quote the Ontario Commission further, "The essential fairness of taking earnings as a basis for taxation of corporations is based on the general principle that the taxes vary with the capacity of the company to pay them, whereas taxation on the basis of general property results in all manner of inequality. The amount of tangible property required by the various corporations has, in the first place, no necessary relation to their relative earning power, and, in the second place, bears no accurate relation to the earning power of the same company at different periods. The capital stock tax has something of the same defect in addition to those already mentioned, yet it has a certain amount of flexibility. Only the tax on earnings follows automatically the capacity of the corporation to pay, and while even it has inequalities, yet it is very much more equitable than any other practical system." As has been suggested, the choice at the present time between the gross and net earnings taxes depends upon the certainty and ease of administration.

It is too frequently assumed by corporations as well as by individuals that all forms of so-called "double taxation" are wrong. This is not true. The lack of equity in the method, as pointed out by Judge Cooley in his work on Taxation, lies in the fact that it requires that "one person or any one subject of taxation shall directly contribute twice to the same burden, while other subjects of taxation belonging to the same class are required to contribute but once." The taxation by one government several times of the same taxable subjects does not constitute double taxation or multiple taxation in the objectionable sense any more than does the taxation of the same subjects by several taxing authorities such as those of city, county, state and national governments. Such taxation means usually that the taxing government has not properly measured its needs and must again and perhaps again call upon the contributors to its revenue for support. The budget system would tend to do away with this nuisance. Nor does the taxation by the same method, as, for instance, income taxation, for the purpose of two or more taxing authorities, as national and state governments, constitute double taxation in the objectionable sense. It is when there is a false economic basis for taxation, when two values are assumed to exist when there is but one value, and when the two values are taxed as against the single taxation of other values similarly located and circumstanced, that double taxation is inequitable and unjust. The multiplication of corporations, with their shares and bonds, owned by persons distributed in different taxing jurisdictions and the expansion of credits, often mixed as to places of ownership and investment, together with a general ignorance or ignoring on the part of the public and of tax officials of the economic difference between wealth and the evidences of its ownership, or wealth and property, and the constitutional limitations on the courts growing out of the same failure to distinguish, are largely responsible for the fiscal bedlam in which most of our taxing units now find themselves.

Wealth in the popular sense means ownership of any kind of positive value, including property, which is a legal rather than an economic term and represents a "right" of some kind. Wealth in its strict economic sense means a material thing, such as land, buildings, implements, live stock, factories, machinery, products, house furnishings, clothing, jewelry, and the like. Property is a broader term, including wealth in the economic sense, but also representatives of the ownership of wealth, choses in action, and other extrinsically valuable rights, and is practically coextensive in inclusiveness with the popular conception of wealth. A mortgage or a share of stock is property, but not wealth, since it only represents a right to or in wealth. In the hands of the stockholders of a corporation, the shares are legally taxable to their owners. But where the corporation and the shareholders are domiciled in the same jurisdiction, it has been considered unjust to tax the corporate property and also the shares which represent it. Therefore, the corporation is taxed and the shareholders, as such, are exempted. The courts generally have held it to be the intent of legislation to tax the property but once, and not twice under different names. Sometimes, however, the same jurisdiction taxes the corporation and also the stockholders and bondholders. But where a corporation is domiciled in a foreign jurisdiction, as a rule the resident shareholder is taxed on his shares where he lives, both on the legal theory that personal property follows its owner and on the economic theory that a person owes a tax allegiance to the place where he lives. With the weakening of the idea of taxing the *person* in favor of the idea of taxing his *property* and the further development of taxing earning capacity of the property and of the individual himself as expressed by his income, has come a strengthening of the sense of justice in relieving property from bearing the same burden twice. In New York, for instance, a state advanced beyond most others in recognizing the principle of interstate comity, the courts have held that a resident of that state holding shares in an Indiana corporation shall not be taxed on those shares since the shares are only evidences of interest in property existing elsewhere and do not constitute property "situated" in New York. This decision construes a statute whose meaning is not explicit. It is obvious that the incorporation of an individual business or partnership and the issuance of shares and bonds does not increase wealth, but only the property representatives of wealth. For instance, if Miller and Brown own in partnership a farm free and clear worth $30,000 and decide to incorporate a nursery company to which they will turn over the farm and take at par $14,000 of stock each, selling $2,000 of stock to a third incorporator, there is still wealth to the value of $30,000, but no more, though there are three evidences of ownership of interests in the same property. There are no practical grounds for higher taxation of this property under the corporate form than there was under the partnership form. Nor is there good reason for taxing the wealth represented in the property, and in addition the same wealth represented by the stock certificates. To tax capital that goes into some particular form of business, as into the stocks and bonds of the corporation, taxes that form of business enterprise. This does not mean that representative forms of property should be wholly free from taxation, for they do impose a little more expense on the community than directly owned property. Besides the corporate form gives the opportunity of conducting some businesses on such a large scale that their capital can be more profitably employed than that of a similar business on a smaller scale. But the greater profits may and usually do represent also greater risks and more skill in management, so that, as a matter of fact there is too small a basis of justification for taxing representative forms of wealth to warrant more than nominal taxation. Special productive capacity under the corporate form should not be taxed unless it is taxed also under other business forms. It may be remarked that, as from a legal standpoint there is found reason in public policy for encouraging corporate enterprises, and, as from an economic standpoint the corporation offers holders of funds wider opportunity for profitable investment than they otherwise would have, over-taxation of corporations reacts on the unit of taxation that imposes the excessive tax. It is also worthy of note that business in the corporate form can not shift the incidence of taxation to a greater extent than that under partnership or individual ownership. Indeed, where rates for service and quality of service of public utilities are too stringently regulated it may happen that taxes can not be shifted at all and oppressive taxation may result in failure of the business. When our constitutions and legislative laws are brought into accord with economic truths through the education of the public, especially the legislators and judiciary, and when the states acquire a sense of the equitable rights of their citizen creditors and of the obligations of interstate comity, the lot of the investor in corporation securities will be easier. The present status either discourages investment in corporation securities or leads their owners to make false statements in giving in their taxable properties, or both. In many instances, if holders of corporation credits gave in their property for taxation, all the income from it would be confiscated. Economists agree that both wealth and persons are proper subjects for taxation, the former at the place of its location, upon its capital value, the latter at the place of his domicil, as respects his income. The decisions of the courts as to situs frequently are confusing and mixed in their use of legal and economic terms and the principal corrective open to the public is a recasting of the state constitutions, which in so many cases is considered to be a necessity, and to take care that the new constitutions restrict jurisdiction in tax matters to wealth and persons while they enlarge the powers of legislatures to discriminate between wealth and property and give more freedom to follow economic principles.

It may be remarked here that some authorities advocate the system of making double taxation the rule in all jurisdictions in order to eliminate the inequities of the double tax as it now exists. For instance, the impersonal and personal bases of taxation both would be used, taxing every resident on his property located in the jurisdiction and on his property located elsewhere and his income from any source. Professor Allyn A. Young says, in an address before the National Tax Association on Personal or Impersonal Taxation, "A corporation would be taxed on its tangible property in the state or states in which such property is located. Its bondholders would be taxed, at a lower rate, of course, on the securities in the states in which they reside. Furthermore, stockholders would be similarly taxed on their stock. Yet further—and here is where the scheme goes beyond present tendencies—the landowner would be taxed on his land in the state in which it is located and on the ownership of it or the income from it in the state in which he lives. If owner and land are in the same taxing district, there should be two taxes imposed, one because the land is located there, and the other because the owner lives there. We can not transform our present system of taxation so that it shall have an exclusively personal basis; but we can so extend our present personal taxes, which are now superadded to the tax on tangibles in a few small patches, so that it will constitute a complete and harmonious system, absolutely coterminous with the system of the impersonal taxation of wealth at its situs. Double taxation would be eliminated by the simple device of making double taxation the uniform rule." Later in the same address he says, "I feel that there is evidence that already we are letting the pressure of erroneous popular notions of taxation, bred of our familiarity with the general property tax, and the urgent demand for increased state revenues, force us into paths that are bound to lead to confusion, and even, I fear, to a repetition of some of the worst phases of our experience with the general property tax. I can not see that it is consistent with the principles of personal taxation to apply the state income tax or the special tax on intangibles to corporations or to make of the income tax a tax on 'business.' It will inevitably lead to new and serious difficulties (including multiple taxation and retaliatory legislation) if the state attempts to levy such taxes upon foreign corporations upon the basis of the proportion of the business of such corporations done within the state. If 'business' must be given a special habitat for purposes of taxation, apart from the domicils of its owners and the situs of property used in it, it should be effected by simple and uniform rules, applying to domestic as well as to foreign business undertakings. And the imposition, I suggest, should frankly take the form of a privilege tax or license fee, and should not be given the guise of an extension of the application of general taxes upon property or persons."

A rule of corporation accounting will illuminate to some extent the proper application of tax charges under some systems. It is generally conceded that in theory no additions to the property of a corporation, either to real estate or equipment, should be considered betterments chargeable to capital account unless they increase the productivity or earning capacity of the plant. Likewise, to some extent, such additions or replacements should not be subject to additional tax unless they are properly chargeable in whole or in part to capital account. For instance, if a railway must replace an old and dangerous bridge with a new one of equal capacity, it is apparent that previous charges against earnings for depreciation are the proper source of capital to reconstruct the bridge and that a charge to capital account can not properly be made. The original capital merely has been kept intact through the depreciation charge against income. If, however, a new bridge is erected which will add to the earning capacity of the road through its ability to carry heavier loads, the difference between the cost of replacement of the old bridge and the cost of the new and stronger bridge is chargeable properly to capital account. This simple illustration is used so as not to complicate the accountancy problem by assuming that the cost of materials probably would have advanced between the time of construction of the old bridge and of the new. The additional value here is also properly taxable. Take the instance, too, of a wholly unproductive improvement, such as elevated tracks through a city. The elevation adds in no way to the earning capacity of the road, and savings through fewer damage suits, fewer flagmen or crossing devices are negligible, being to some extent balanced at times through losses in freight stations or the necessity of elevating freight to the tracks. The public forces the road to pay the major part of the cost of the elevation, which though strictly not chargeable to capital account, is usually so handled by the roads. If the profit and loss account were credited annually with all surplus earnings over and above fixed charges and, perhaps, dividends, and the costs of this unproductive improvement were charged against this surplus, this would be the proper way, theoretically, to handle it. But the cost of the improvements may be so large that it is impractical to handle it so, and it is necessary to charge it to capital and to meet the cost from the sale of stock or bonds. As railroads are not a property of everyday trade, and as the elevation is not an actual business asset and can not be realized on except in event of the sale of the road, it is obvious that to compel a railroad to elevate its tracks and then to tax it on the cost of the unproductive improvement, as some state tax commissions are inclined to do, is unfair. The forced improvement is in itself somewhat in the nature of a tax for the benefit of the general public, and further charges should not be applied. The same general rule set out here as being applicable to corporations whose improvements do not increase the earning capacity by increasing the carrying capacity or output also applies to those improvements which do not decrease the cost of production. The application of a rule of this kind is made only after taking into consideration all the circumstances surrounding the case and there may be some instances in which the analogy of the accounting rule will fail in the application of tax charges. This would be obvious where a railway acquired real estate for future use for yards and repair shops, which for the time being contributes nothing to the earning capacity of the road.

There are many objections to the federal income tax, too many to take into consideration here. In the first place, it is expensive in operation and through the provision of collecting taxes at their source, it imposes the burdens of collection with much of the expense thereof, estimated at from ten to twenty per cent. (in some instances it is much higher) on those who by chance have control over the payment to others of interest, salaries, annuities and other fixed and determinable annual gains, profits and income. It probably costs the government as much more to handle and record the returns, making a total cost of from twenty to forty per cent. to gather this tax. Then partnerships are not required to file the same kind of reports as corporations nor to pay the normal tax, as corporations are required to do; it is said there are difficulties in the way of this that make it impracticable. An important matter for consideration is the situation of those corporation bonds, comprising most of those now outstanding, which have clauses agreeing to pay the interest named in the bond free from any taxes the corporations may be required to withhold or deduct. These provisions were made with reference to state laws and before the federal law was passed. The federal income law of 1913 is so framed as to bring within its provisions these tax agreements, with the result that the tax usually falls upon the corporations themselves and not on those upon whom it was intended to fall. This amounts to an excise tax on corporations, which tax, however, in most cases, will be shifted to the consumers of their products either in higher prices or in poorer service. It may be that the holders of bonds are entitled to exemptions, but as the corporation may have no means of determining whether they are entitled to the exemptions, and as it has no authority to compel the bondholders to claim such exemptions, the excess taxes are paid by it with resultant effects that clearly are detrimental to it. Under the federal act, a bondholder of only mild ethical inclinations can further free himself from tax burdens which he should pay by neglecting or refusing to declare his exemptions in favor of the corporation which pays his tax and by claiming all the exemptions against income from other sources not protected by tax-free agreements. When a bondholder has other income, a corporation withholding and paying his income tax on bonds should be entitled to its share of his proper exemption. A remedy for these conditions is to modify the act so that, instead of collecting the tax at its source, only information as to the recipients of income shall be secured at that source. The intent of the law has been perverted in practice, and as its operation defeats the purpose of the sixteenth amendment to the constitution and as the inequalities it permits are so flagrant as to demand an early alteration, it is not worth while to go further into this phase of the subject. A discrimination against the owners of small amounts of corporation stock to whose dividends the exemption is not permitted to apply, is differential both as to corporate incomes and to individuals, and is discouraging to the small investor, which is contrary to public policy. One provision of the law, that forbidding corporations from deducting from their net income the dividends received from other corporations, is an unjust discrimination against many holding companies which are doing not only what they have a right to do under the law, but what may be forced on them by the peculiarities of some of the state laws. Mr. Mortimer

L. Schiff uses this illustration: "Take, for example, the case of a railway corporation which owns a line in the state of Texas, which it can hold under the Texas law only through a Texas corporation. The latter must pay the income tax of one per cent. upon its net income, and then the parent company again must pay the same tax on dividends received, with the result that a tax of two per cent. must be paid in respect to this part of its income."

In the taxing of corporations this fundamental truth should be borne in mind that, after all, it is property of a collection of individuals that is being taxed. The old conception of a corporation as being an artificial person,* separate and distinct from its members, may to some extent be responsible for the slight consideration it has had at the hands of legislators and assessors. In the Railroad Tax Cases (13 Federal Reporter 758), Judge Sawyer wrote: "Whatever be the legal nature of a corporation as an artificial, metaphysical being, separate and distinct from the individual members, and whatever distinctions the common law makes, in carrying out the technical legal conception, between property of the corporation and that of the individual members, still, in applying the fundamental guaranties of the constitution, and in thus protecting the rights of property, these metaphysical and technical notions must give way to the reality. The truth can not be evaded that, for the purpose of protecting rights, the property of all business and trading corporations is the property of the individual corporators. A state act depriving a business corporation of its property without due process of law does, in fact, deprive the individual corporators of their property. In this sense, and within the scope of these grand safeguards of pri-

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*Berolzheimer, in The World's Legal Philosophies (p. 371), says, quoting Gierke, " 'As against the *persona ficta* the theory of association sets up the conception of a corporation which treats it as a real corporate personality; and this is the essence of the theory of association.' * * * To this doctrine are due the modern theories which oppose the assumption of a legal fiction in regard to juristic persons—a fiction surviving through inertia."

vate rights, there is no real distinction between artificial persons, or corporations, and natural persons." Then, too, the fact that, in the public mind large corporations represent accumulated wealth, and the further fact that their officers and managers are usually men of considerable wealth, whether a majority of their stockholders are or not, arouses an unintelligent class interest and prejudice and fosters the tendency of the masses to bear down on the corporations by putting heavier burdens on them. Walker, in his work on Political Economy, says, at page 454, "The appetite for plundering the accumulated stock of wealth, once aroused, may become a formidable social and political evil." So far as our large corporations represent accumulated wealth, this formidable social and political evil is among us. Two lines of relief suggest themselves: (1) Bringing before the public, which takes it too much as its due, the fact that great corporations benefit all of its members, directly or indirectly, and that they are the backbone of all business, and of tremendous importance in the development of our country; and (2) educating the people, but particularly the legislators, in the economics of taxation. Most of our laws are made by lawyers, but few of these lawyers know either practical business, accounting, finance or economics. The result is, we have a simple, primitive law of taxation, but yet no rational economic basis of taxation in most of our states. Professor Richard Ely, of the University of Wisconsin, in his book, Taxation in American States and Cities, regrets that American lawyers never have grasped the fundamental principles of taxation and compares the American bar with the bars of France and Prussia, where one who has not studied political economy is refused admission to practice. Our American business men are as backward on taxation as are the lawyers, except in a few instances where inequality and injustice have forced the subject on their attention. At present the economists in our universities constitute the only class that is making much progress in the subject. Various tax leagues and associations, many attached to some particular propaganda, exist among us. But what we need is a popularization of the subject. Perhaps the most significant discovery of tax investigators is that the public usually does not try to escape taxes and is willing to pay its full share even when taxes are high if it feels that the burden is borne equally by all who are able to pay and that the money is spent judiciously. Is it too much to hope that our chambers of commerce, commercial clubs, boards of trade and other general business organizations will appoint committees on public revenues and taxation? Few of them now have such committees, yet there is no committee so fundamental to the work of such organizations. Whether these organizations are meant purely to stimulate the industrial and commercial activity of their communities or whether they deal more largely with civic affairs, they often must rely largely, if not solely, on public funds to accomplish the purposes on which they are set. A commercial organization which sees the necessity for paved streets for the accommodation of its factory district or which wants to bring about adequate lighting of streets in a city without funds or good credit might almost as well go out of business if it is not willing to tackle the subject of public revenues. The rate of taxation, the desirability of a community for the residence of officers of a company, usually will have much to do with the removal of an enterprise to a community or with its starting there. Chambers of commerce should try strenuously to interest the business and professional men of the community in taxation through lectures and instruction which will simplify the subject so as to get a reasonable popular conception of this question which is of such common concern.

PART X.

FORMS.

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FORMS.

Form 1. Option Agreement.

An Agreement entered into this 18th day of April, 1916, by and between the Shelper Brush and Broom Company, a corporation duly organized under the laws of the State of Indiana, party of the first part, and Harrison Williams, of South Bend, Indiana, party of the second part.

For and in consideration of the sum of one dollar paid said party of the first part by the party of the second part, receipt whereof is hereby acknowledged, and for other good and valuable considerations, said party of the first part does hereby agree to sell to said party of the second part, as a going concern, its entire business, factories and plant for the manufacture and sale of brushes and brooms, owned and operated by said party of the first part in Indianapolis, Marion County, Indiana, including therewith all machinery, tools and other property and appurtenances thereunto belonging, together with all raw materials and manufactured products on hand, and all contracts relating to the purchase or sale of such materials and products; also the good will of said business and all trade-marks, brands, patent rights, licenses and shop rights used therein and controlled by said party of the first part; excepting only moneys and bills and accounts receivable on hand at the time of sale; all of said property to be delivered free and clear from all liens, charges, incumbrances, taxes and assessments, save and except for a certain mortgage upon real property of the party of the first part, amounting to sixteen thousand ($16,000) dollars and now on record in the office of the Recorder of Marion County, Indiana.

The price to be paid for said property shall be an amount twenty-five thousand ($25,000) dollars in excess of the actual appraised value at the time of purchase of said real and personal property, exclusive of good will, as above set forth, and such amount shall be paid in cash at the time of transfer, the aforementioned mortgage being assumed by the purchaser and accounted as a cash payment to the amount of said sum of sixteen thousand ($16,000) dollars and accrued interest thereon due at the time.

This option shall expire and be of no further effect on and after the 30th day of September, 1916, unless prior thereto said party of the second part, or his assigns shall, in writing, notify said party of the first part of his or their intention to exercise the same, and shall at that time deposit in the Indiana National Bank, ten thousand ($10,000) dollars in cash as a guaranty of good faith and to apply upon the purchase of said property, and in such event the party of the first part shall within sixty days of such notice and deposit, transfer and convey said business and property by such deeds, conveyances and assignments and other instruments as may be necessary to vest the full right, title and interest in said business and property in said party of the second part or his assigns.

It is further understood and agreed that said party of the second part assumes no responsibility to purchase said property unless he or his assigns shall elect so to do by written notice and deposit in bank as hereinbefore provided, and that in case of assignment of this present instrument by said party of the second part, all its provisions shall inure to the benefit of, and run in favor of, and be binding upon his assignee or assignees in every respect as theretofore upon said party of the second part, and in case of such assignment the said party of the second part shall be free from all liability hereunder.

In case of any disagreement as to the terms of this option or as to any matters connected with the exercise thereof, each party hereunto shall appoint an arbitrator, and the two so appointed shall appoint a third, and the three arbitrators so selected shall be empowered to finally decide all matters of disagreement.

IN WITNESS WHEREOF, the Shelper Brush and Broom Company, party of the first part, has caused its corporate name to be signed hereto by its President and its duly attested seal to be affixed hereunto by its Secretary, and the party of the second part has affixed his signature and seal, all on the day and year first above written.

Form 2. Option Agreement.

An Option Agreement entered into this 16th day of December, 1912, by and between the Frisbie Motor Company, a corporation duly organized under the laws of New York, and having its principal office in the Borough of Brooklyn, City of New York, hereinafter called the Vendor; and Joseph Critchley and Martin W. Heath jointly, their nominees or assigns, hereinafter called the Vendees:

Whereas, the said Vendees propose to form a corporation under the laws of the State of New Jersey to be called the Hervey-Mann Electric Company, hereinafter designated the Company, for the purpose of manufacturing, buying and selling electric apparatus, machinery and materials; and,

Whereas, said Vendees are desirous of securing for and on behalf of said corporation the right to purchase the plant and property of the aforesaid Frisbie Motor Company and of securing similar rights to purchase other plants and properties suitable for the purposes of the said Hervey-Mann Electric Company.

Now, therefore, in consideration of the premises and of the recitals of this present agreement, and for the sum of one dollar to the said Vendor in hand paid by the said Vendees, the receipt whereof is hereby acknowledged, the said Vendor agrees to give and does hereby give and grant to the said Vendees the sole and exclusive right and option until the 1st day of April, 1913, of purchasing the plant and property belonging to the Vendor and situated at 98-104 Bushwick Avenue, in the City of New York, Borough of Brooklyn, County of Kings, including the land, buildings and improvements, and the machinery, tools, supplies and equipment in or on said buildings and land, together with the good will, patents, trade-marks and all visible and tangible property, real and personal, of the said Vendor in, or on, or connected with said plant and property and the business conducted therein or thereon, excluding only cash on hand and in bank at the time of purchase, and bills and accounts receivable for work then already done or for supplies already furnished, the conditions of said option being as follows:

First. The capital stock of the said Hervey-Mann Electric Company shall not be less than five million ($5,000,000) dollars, divided into shares of the par value of one hundred ($100) dollars each, and of said capital stock not less than two-fifths shall be eight (8%) per cent., cumulative preferred stock, preferential as to both assets and dividends, the exact amount of preferred stock to be determined by and to be equal to the income valuation of the properties taken over by the said Hervey-Mann Electric Company, said income valuation to be determined as set forth in article Fourth of the present agreement, and the remaining portion of the said capital stock to be common stock.

Second. The said Vendees shall at their own charge and expense send a duly qualified accountant or accountants to audit and examine the books and records of the said Vendor for the five years ending November 1, 1912, and to make such reports and statement thereof as shall show the present status of the business, the assets and liabilities thereof, and the net profits for the period named and for each year thereof, and the average annual profits for the said period.

Third. Said Vendees shall also at their own charge and expense employ a skilled appraiser, and the two appraisers shall prepare an inventory and appraisement of all the property included under this option. In event of their disagreement, the two said appraisers shall select a third qualified appraiser and the decision of a majority of the three said appraisers shall be final, and this appraisal value shall be termed the "property valuation."

Fourth. A sum shall be taken of which the annual average net profits for the five years ending January 1, 1913, of all the properties to be taken over by the said Company shall be eight (8%) per cent., and this sum shall be called the "income valuation" of said property.

Fifth. The price payable in the stock of the said proposed Company for which the Vendor will sell said property under this option is as follows:

> Such amount of cumulative, eight (8%) per cent. preferred stock of the proposed Company as shall equal the "income valuation" of said property, determined as set forth in article Fourth of the present agreement.
>
> Such amount of the common stock of said Company as shall equal the property valuation of said property determined as set forth in article Third of the present agreement.

Sixth. The certificates for stock paid the Vendor hereunder shall be issued in the name of the Vendor or its order, and should the amount of either common or preferred stock payable to the Vendor include the fraction of a hundred dollars, then a full share shall issue therefor to said Vendor.

Seventh. In the event of any material change in the value of the assets or business included under this option after the examination of books and appraisal of property hereinbefore provided for, whether by act of the Vendor or through fire or other casualty, the parties hereto may agree upon a proportionate change in the selling price; or if they can not agree thereupon, or if disagreement or misunderstanding shall arise in any manner in connection with this option or its exercise, such difference shall be determined and settled by arbitration in the usual manner.

Eighth. At any time on or before the 1st day of April, 1913, the said Vendees may exercise the rights of this present option by giving written notice to the Vendor of their intention so to do, together with a written demand upon the Vendor for fulfillment of its terms.

Ninth. Within twenty days after such written demand has been made, the said Vendor shall deliver to the Security Trust Company of New York City duly prepared abstracts of title to all of the real estate of the said Vendor included under this option, showing the present condition of the title thereto and accompanied by full and sufficient deeds of general warranty, bills of sale, assignments and all such other conveyances to said Vendees as shall be usual or necessary for the conveyance and assurance of all the property and assets, real and personal, included under this present option.

Tenth. Within thirty days after such written demand and notice, the Vendees shall deliver or cause to be delivered to the said Security Trust Company in trust for the said Vendor, the entire amount of common and preferred stock of the aforementioned Hervey-Mann Electric Company required to pay for the property included under this option, as set forth in article Fifth of the present agreement, whereupon the said Security Trust Company shall make delivery of all deeds, assignments and conveyances to the said Vendees.

Eleventh. If the Vendees shall fail to pay over the said consideration to the said Security Trust Company within thirty days after their written demand and notice given in compliance with the terms of article Eighth of the present agreement, this option shall be abrogated and the said Security Trust Company shall return to said Vendor all the abstracts, deeds, assignments and other instruments deposited in its custody, without lien or claim of any kind upon the said instruments and papers for any charges and expenses connected with the escrow thereof, nor shall the Vendor be liable in any way for the services of said Security Trust Company, the Vendees alone under any and all circumstances assuming the sole liability for and payment of all such expenses.

Twelfth. If the Vendees shall fail to exercise this option within the period limited, by making written demand and notice as specified, then this option shall fail and there shall be no further privity of contract nor responsibility nor liability nor claim hereunder of any kind on or against either of the parties hereto by reason of this present agreement.

Thirteenth. If the sale herein contemplated be consummated, the Vendees agree to take over and assume at the time of such consummation all bona fide contracts previously entered into by the Vendor, for the purchase and sale of materials, raw or manufactured, in connection with the property and business included hereunder.

Fourteenth. The real and personal property assets and business of the said Vendor shall at the time of transfer be free and clear of all liens, mortgages, judgments, debts and other liabilities whatsoever, except engagements under current business and contracts taken over by Vendees, and such transfer shall be made by warranty deeds and full guaranty of title to all personal property, and upon demand of the Vendees, the Vendor will execute or cause to be executed all such further instruments, assignments and conveyances as may be necessary to properly effect such transfer.

Fifteenth. If the sale herein contemplated be consummated, then the Vendor and all connected with said Vendor in privity of interest, shall bind and obligate themselves by duly executed contracts, not to engage in nor to be or become interested for a period of ten years, either directly or indirectly, as individuals, partners, stockholders, directors, officers, clerks, agents or employes, in the business of buying, manufacturing or selling electrical supplies, material, machinery or any kindred products or byproducts of Vendor's factory, within a radius of five hundred miles of the City of New York, unless with the written consent of the Vendees, or in their service.

Sixteenth. The Vendees named, Joseph Critchley and Martin W. Heath, or their survivors, shall act jointly in all matters and contracts relating to this option, and not severally, and shall be trustees for the purposes named, and upon assignment of this option they shall be discharged from all responsibility and liability in connection therewith, and such assignee or assignees shall be considered the sole Vendee party or parties to this option, with all the rights and privileges thereof in all respects as if an original party or parties thereto.

IN WITNESS WHEREOF the said Frisbie Motor Company has caused this instrument to be signed and sealed by its proper officers, duly authorized thereto, and the said Joseph Critchley and Martin W. Heath have hereunto affixed their hands and seals on the day and year aforesaid.

(Corporate Seal.)

FRISBIE MOTOR COMPANY,
By Daniel Winter,
President.

Attest Seal:
Norman B. Hartung,
Secretary.

Joseph Critchley (L. S.)
Martin W. Heath (L. S.)

Attest signatures:
Wilfred Haygood,
John F. Downing.

Form 3. Option on Coal and Mineral Land.

Iowa.

This agreement, made this .... day of ...., A. D. 19...., by and between ...., of the county of ...., state of ...., party of the first part, and ...., of the county of ...., state of Iowa, party of the second part, or assigns,

Witnesseth, that whereas, the said party of the first part is the owner of the following described real estate, situated in the county of ...., state of Iowa, to wit: (description).

And said party of the second part is desirous of prospecting thereon for coal, or other minerals; that said party of the first part for and in consideration of one dollar, in hand paid by said party of the second part, the receipt of which is hereby acknowledged, has granted and does by these presents grant to the said party of the second part the right to enter in and upon said lands, and any part thereof, and to prospect for coal and other minerals, and sink such prospect shafts and slopes, or drill such holes as may be necessary to ascertain the quantity and quality of any coal or other minerals in and upon and underlying said land, such privilege so hereby granted to continue in full force and virtue to and until the .... day of ...., 19...., from the date of these presents; and for the consideration aforesaid the said party of the first part agrees to and with the said party of the second part, that said party of the second part shall have the right and option at any time on or before the said .... day of ...., 19...., to purchase said land, coal or other minerals at and for the price of .... dollars per acre, for land, coal and minerals.

It is understood and agreed that the said party of the second part, however, shall not be held liable or bound to take such land, coal or minerals except at his option; and in event of his abandoning or not making the purchase thereof as herein provided he shall not be held liable for any damages or compensation therefor, or growing out thereof, or for the sinking of shafts, slopes or prospect holes, as aforesaid.

Provided, however, that notice of the determination of the said party of the second part to make such purchase shall be given in writing to said party of the first part on or before the expiration of said period, as aforesaid. This contract shall be null and void and absolutely terminate, unless purchase is made and notice is given in writing by the .... day of ...., 19...., as above set forth.

The said party of the second part shall not be bound to make any tender of the purchase-price, but the same shall be paid to the party of the first part upon delivery to the said party of the second part of a good and sufficient deed of said land or coal or other minerals as aforesaid; provided, in case there should be any incumbrances or liens upon said lands, that shall not be removed by said party of the first part, the said party of the second part may pay and discharge the same out of the purchase-money aforesaid, the balance, after satisfying said incumbrances and liens, to be paid to the party of the first part, upon delivery of deed as aforesaid. An abstract of title showing perfect title shall be furnished by first party.

This agreement shall run with the land, and be binding upon the several heirs, executors, administrators and assigns of the parties hereto. In case of failure to purchase, second party may remove all tools, machinery and appliances used in prospecting on said land.

In case said second party shall purchase said land, said first party shall have the right to remove all crops therefrom, and the right of second party to enter upon said lands for the purpose of mining said coal is admitted.

In witness whereof, the said parties of the first and second part have hereunto set their hands and seals, the day and year first above written.

(Signatures and seals.)

Witnesses:
(Signatures.)

Form 4. General Form of Option for the Sale of Real Estate.

This agreement, made this .... day of ...., 19...., between ...., of ...., hereinafter called the Real Estate Company, and ...., of ...., hereinafter called the Seller, witnesseth:

In consideration of .... dollars, the receipt of which is hereby acknowledged, said seller hereby agrees to convey by warranty deed to said Real Estate Company or to any person, persons or corporation said company may designate, at any time that it may demand on or before the .... day of ...., 19...., for the sum of .... dollars to be paid according to the following terms (here insert terms), all of that certain piece of real estate situated in township of ...., county of ...., state of ...., more particularly described as follows: (Here insert description.)

Said Seller hereby agrees to furnish said Real Estate Company or anyone whom it may designate a good merchantable abstract of title on or before the .... day of ...., 19...., and to give said Real Estate Company or anyone by it designated, complete and peaceable possession of said premises on or before the .... day of ...., 19.....

In witness, etc.

Form 5. Another Form of Option for the Purchase of Real Estate.

In consideration of .... dollars, receipt whereof is hereby acknowledged, I hereby agree to give .... the option to buy the following described real estate in the county of ...., state of ...., to wit: (Here describe real estate fully.)

Said .... shall have the right to close this option at any time within .... months from date, and I agree to execute to him or any person named by him, a good warranty deed to said real estate, and to furnish therefor an abstract of title showing said title to be perfect, upon demand thereof. Upon the execution of said deed and abstract, I shall be paid the sum of .... dollars as full payment of the purchase-price of said real estate. I further agree neither to sell nor incumber said real estate during said term, and should I do so I will forfeit .... dollars to said .... as damages. Likewise, should I fail, neglect or refuse to make said deed, or to furnish said abstract as above provided, I will forfeit to him as damages .... dollars. I waive all claims for damages for failure to close this option.

(Signature.)

Form 6. Option on Stock.

This agreement, made this .... day of ...., 19...., between ...., of ...., party of the first part, and ...., of ...., party of the second part, witnesseth:

In consideration of .... dollars, the receipt whereof is hereby acknowledged, the party of the first part hereby agrees to sell .... shares of the capital stock of the .... corporation at .... dollars per share at any time within .... days from date.

All dividends or extra dividends declared during said time are to go with the stock; and .... days' notice of acceptance will be given by said party of the second part.

In witness, etc.

Form 7. Promoter's Contract.

Whereas, the undersigned subscribers contemplate the organization of a corporation under the laws of the state (or territory) of ...., to be known by the name of ...., or by such other name as the subscribing stockholders therein may adopt, having an authorized capital stock of $......, divided into .... shares of $........ each, for the purpose of (state object of corporation briefly).

It is hereby agreed by and between said subscribers and (promoter's name):

(1) That each of said subscribers will take the amount of stock in said corporation set opposite his name and pay for the same according to the terms of a subscription contract this day executed by said subscribers.

(2) That said (promoter's name) has heretofore done work and performed services of great value in preparing for the organization of said corporation and securing subscriptions to its capital stock, and is hereafter to perform additional services in perfecting its organization and securing *bona fide* subscriptions to the capital stock of said corporation aggregating (aside from the stock taken by the subscribers hereto) the sum of $......, or such part thereof as the subscribing stockholders may deem necessary to dispose of.

(3) Said (promoter's name) shall have .... days in which to secure subscriptions for the aforesaid $...... of capital stock of said company, and if he has failed to do so at the end of that time the subscribers, at their option, may extend his authority, or may recall it, and may, if they so elect, subscribe for the remaining portion of said $........ of capital stock which then remains unsubscribed for, or induce others to take it, or abandon the formation of said corporation.

(4) Upon the incorporation of said proposed company there shall be issued to said (promoter's name), or to any person designated by him, by indorsement on this agreement, in payment for his services in effecting such incorporation and securing the aforesaid subscriptions to the capital stock as above provided, ... shares of the capital stock of said corporation.

Provided, That if said (promoter's name) shall have failed to secure *bona fide* subscriptions to said capital stock in the full amount of $........, there shall be issued to him only such proportion of .... shares of stock as the capital stock for which he has obtained subscriptions is of $........, the whole amount for which he hereby undertakes to solicit subscriptions.

Provided, further, That if said company be incorporated before the time allowed said (promoter's name) for obtaining subscriptions has expired and said (promoter's name) shall thereafter, under the terms of this contract secure additional *bona fide* subscriptions to the capital stock of said company, as above provided, shares of stock shall be issued within thirty days after the said time allowed for obtaining subscriptions has expired to (promoter's name), or to his assignee, as above provided, in the proportion of one share of stock for each $........ of capital stock for which subscriptions are so secured by him.

IN WITNESS WHEREOF the said subscribers have hereunto attached their names and designated the number of shares taken by each of them, and said (promoter's name) has agreed to the above terms.

	SHARES
....	....
....	....
....	....

I agree to the above terms.

(Signed by promoter.)

Form 8. Oath of Promoters and Organizers of Corporation.

STATE OF ...., COUNTY OF ...., SS:

We, the undersigned, promoters (and organizers) of the .... Company, a corporation organized (or to be organized) under the laws of the state of ...., and located in ...., being severally sworn upon our respective oaths, do represent and swear that our profits for our services as promoters (and organizers) of said corporation consist only in the following (for each or all of us) ...... (here set out profits in full), and that we have not received any other moneys, profits, compensation, benefits, commissions, fees, royalties, rights, or advantages of any kind whatsoever, or promises of any such, or made any agreements for such, and that we have had no other profits, or such, or promises thereof or agreements therefor, from any of the transactions leading to, or connected with, the formation (and organization) of this corporation (excepting, if there are exceptions).

(Signed) ....

Subscribed and sworn to before me this .... day of ......, 19..

.............., Notary Public.

Form 9. Contract with Stock Salesman.

This memorandum of agreement made and entered into in the city of Indianapolis, Indiana, this .... day of ...., 19...., by and between the Hoosier Airless Tire Company, a corporation having a capital stock, all represented by common shares, of two hundred and fifty thousand dollars ($250,000), organized under the laws of Indiana, and located in Indianapolis, Indiana, party of the first part, hereinafter called first party, and Robert M. Barker, of Indianapolis, Indiana, party of the second part, hereinafter called second party, witnesseth that:

Whereas, first party wishes to add equipment to its factory, to increase its capacity to manufacture and to extend and increase its business in various ways by the increase of its working capital, and whereas, it believes the services of second party, a practical and experienced stock salesman and promoter, are desirable to secure the funds needed for said purposes:

Now, therefore, first party proposes, and for and in consideration of the covenants and agreements of second party, hereinafter contained, hereby promises, covenants and agrees with him, his representatives and assigns:

First. To employ second party for a period of six months on a commission basis to solicit subscriptions for stock and to reserve and set aside from the unissued common capital stock of the company hereinafter named, the total of which unissued stock is now 18,000 shares, an amount of stock of a par value of $125,000, that is, 12,500 shares of a par value of ten dollars ($10) each, for exclusive use in filling subscriptions taken by second party, his assigns and his or their agents, said stock, or that part of it which remains unsubscribed through second party to be held in reserve for a period of six months from the date of the execution of this contract, and not to offer for sale, sell, dispose of or contract to dispose of this amount of stock, or any part of it, during that time, to or through any other person without the express written consent of second party.

Second. To refrain from offering for sale, selling, disposing of and contracting to dispose of any of the unissued common stock of the said company remaining, after the setting aside and reserving of the $125,000 of stock herein provided at any time during the said six months without the express written consent of second party or his representatives.

Third. To furnish without cost to second party or his representatives, whenever and so often as he or they may demand during the life of this contract, a complete statement of the financial status and business condition of the company, with a reasonable amount of such advertising matter describing the product or products of the company as may from time to time be issued by the company and may be of value in the disposal of the stock.

Fourth. To exhibit the factory and product of the company to any prospective subscribers to stock who may be brought or sent to the factory by second party or his representatives, and to make such demonstrations of the product as may assist in the sale of stock, all without cost to second party.

Fifth. To pay second party, his representatives, or assigns a commission of twenty per cent. (20%) of the selling price of the stock for all stock subscribed through second party, fifteen per cent. (15%) to be paid to second party in cash when the subscriptions are accepted by first party and five per cent. (5%) to be paid in the capital stock of the company, at par, and to be credited to second party, and a credit receipt to be issued to second party, when the subscription for stock for which it is part commission shall be accepted by first party; but such stock given as part commission shall not be issued to second party until all the stock herein provided to be reserved and set aside shall have been sold or until said six months shall have elapsed or until this contract shall have been mutually dissolved in the meantime and a final adjustment of accounts be made between the parties hereto. No commissions shall be due second party unless the subscriptions on which they are based are accepted by first party, after the subscriptions are determined to be bona fide subscriptions made by solvent and financially able subscribers, said acceptances to be made in writing and signed by the president or treasurer of the company and to be sent both to said subscribers and to second party, it being understood that second party has no authority or right to accept subscriptions on behalf of first party. Notice that each subscription must be so accepted by first party before it is a complete and binding contract shall be printed on the subscription blanks.

Second party, for and in consideration of the covenants and agreements of first party herein contained, hereby promises and agrees with first party:

First. To devote all his time and energy exclusively during the continuance of this contract, that is, for said period of six months, to soliciting subscriptions for the stock herein provided to be set aside and reserved for him; to get at his own expense such advertising circulars and pamphlets as may be necessary to facilitate the sale of the stock, and, in his discretion, to employ such agent or agents for the soliciting of subscriptions as may expedite the purpose for which this contract is made.

Second. To refrain from offering for sale or selling in advance any of the stock to be received by second party as part commission and until all the stock set apart and reserved herein shall have been subscribed or this contract is mutually revoked or has expired.

It is mutually agreed between the parties that the price at which the said reserved stock shall be sold shall be .... per share and that no subscription shall be made due and payable at a time after the expiration of this agreement.

In consideration of the mutuality of this contract the parties hereto agree to all its provisions and in testimony thereof affix their signatures hereunto this day first within written.

Executed in duplicate.

HOOSIER AIRLESS TIRE COMPANY,

Witness to signature of Hoosier
Airless Tire Co.

By ....,
President.

....

By ....,
Secretary.

Witness to signature of
Robert M. Barker.

....

....

Form 10. Subscription List.

THE KEENE-BARR CHEMICAL COMPANY.

To be incorporated under the laws of Indiana by Harry Keene, James Barr and Theodore Hinckle.

Capital Stock, $50,000. Shares each, $100.

Indianapolis, Indiana, September 6, 1916.

We, the undersigned, hereby severally subscribe for and agree to take and pay for at their par value of $100 each the number of shares, with their representative rights, of the capital stock of the Keene-Barr Chemical Company set opposite our respective signatures, said subscriptions to become due as soon as said company is incorporated and organized and to be payable in cash or demand of the treasurer of the company.

NAMES	ADDRESSES	SHARES	AMOUNTS
Harry Keene	236 Blank Ave.	25	$2,500
James Barr	543 Corcoran St.	50	5,000
Theodore Hinckle	1424 Bliss St.	15	1,500
Norman Ford	480 Meridian St.	35	3,500

Form 11. Individual Subscription Blank.

Charleston, Illinois, March .., 19..
(Residence) (Date)

I, the undersigned, hereby subscribe for .... shares at the par value of $100 per share of the capital stock of the .... Company, to be incorporated by Henry Williams, Smith Coburn and Edward Miller under the laws of Illinois with a capital stock of $1,000,000 for the purpose of manufacturing .... in the city of Chicago, this subscription to be payable as soon as said company is incorporated and organized, as follows: Fifty per cent. of the total amount of this subscription on demand of the treasurer of the said company; twenty per cent. on demand of the treasurer at any time after sixty days from the date of incorporation of said company and the remainder at such times after ninety days from said date and in such amounts, but not to exceed in any one month ten per cent. of the total amount subscribed, as the board of directors of said company shall determine.

....
(Signature.)

N. B.—The right is reserved to prorate or reject any or all subscriptions or to allot the stock as may be deemed for the best interests of the company.

Form 12. Subscription List. Preferred and Common Stock.

THE FEDERAL BOX COMPANY,

Indianapolis, Indiana.

To be incorporated under the laws of Indiana for the manufacture of boxes by Winston Maxwell, Albert Hall and Newton Cross.
Capital Stock, $500,000.

Divided into 2,000 shares of Preferred Stock, $200,000, and 3,000 shares of Common Stock, $300,000.

The terms and conditions under which the preferred stock is issued are as follows: The holders of preferred stock are entitled to receive and the company is bound to pay out of any and all surplus profits whenever ascertained, cumulative dividends thereon at the rate of and not exceeding .... per cent. per annum, payable in quarterly, half-yearly or yearly instalments as the board of directors may determine, before any dividends shall be declared or paid on the common stock. The preferred stock shall not be entitled to any voting powers in the corporation and is subject to redemption, in whole or in part, at par, plus five per cent. of premium over par on the .... day of ...., 1918, or at the date of any annual meeting of stockholders thereafter as the board of directors may determine, provided all dividends on stock so redeemed shall have been paid in full.

We, the undersigned, hereby severally subscribe and agree to take and pay for at their par value the number and kind of shares of the capital stock of The Federal Box Company, of Indianapolis, set opposite our respective names, said subscriptions to become due when the company is incorporated and organized and then to be payable in cash on demand of the treasurer of the company.

NAMES	ADDRESSES	COMMON OR PREFERRED	NUMBER OF SHARES	AMOUNT
....	....	....	....	....
....	....	....	....	....
....	....	....	....	....
....	....	....	....	....

Form 13. Individual Subscription for National Bank Stock.

Number of Shares. Amount.

Indianapolis, Ind., ..., 19....

I, the undersigned, hereby apply for .... shares of the capital stock of the Union National Bank, of Indianapolis, to be organized with a capital of $1,000,000 and surplus of $500,000, and agree to accept all or such portion of this subscription as may be allotted to me and to pay therefor one hundred and fifty dollars ($150) per share when called.

Name ....

Address ....

Form 14. Conditional Stock Subscription Agreement Before Incorporation.

Whereas, it is the intention to organize a corporation under the .... act of the state of ...., said corporation to be known as ...., or by such other name as may be selected, to be located in ...., and to have a capital stock of $........, of a par value of $........ per share, $........ of said stock to be common stock, and $........ to be preferred stock, the terms and conditions of issue of said preferred stock to be as follows (here set out); the purpose of said corporation to be (set out); and whereas, the subscribers hereto wish to become shareholders in said corporation.

Now, therefore, the undersigned hereby mutually agree with one another and with (name of promoter or organizer of corporation), of ...., in consideration of his promises hereinafter contained, and bind themselves to pay on demand to the said (promoter or organizer) or to any person or corporation to whom he may assign this agreement, the amount of money representing the number of shares set opposite our respective names or such part thereof as may be called for, for which shares we hereby subscribe, and the certificates for which shares thus paid for, either common or preferred, as designated, shall be delivered to each of us at the earliest moment in reason after the organization of said corporation, the payments meanwhile to be represented by proper scrip or receipts issued to the subscribers.

This agreement is conditioned, and it is binding only, upon the procuring by said (promoter or organizer) of *bona fide* and solvent subscriptions to the capital stock of said corporation to the amount of $........, at least $........ of which shall be for common stock, on or before the .... day of ...., 19...., it being further understood and agreed that no single person, association or corporation shall subscribe for more than .... shares of the common capital stock of said corporation. After said date this agreement shall be void and of no effect.

The said (promoter), in consideration of the foregoing promises, on his part promises and agrees to be energetic and to use his best ability to obtain subscriptions aggregating at least the minimum amount named herein, and to observe the conditions herein and fulfill the representations hereof in the organization of said corporation and in general to use his best efforts to accomplish and perfect the organization of said corporation.

It is mutually agreed that exact reproductions of this subscription agreement may be made and executed, each of which so made and executed shall be deemed an original, and this and all the counterparts together shall constitute a single agreement and shall be one and the same instrument.

Witness our hands, etc. (Signature of promoter.)

SUBSCRIBERS' NAMES	RESIDENCE	NO. OF SHARES	PREFERRED OR COMMON	AMOUNT IN DOLLARS
....	....	....	....	....
....	....	....	....	....
....	....	....	....	....
....	....	....	....	....

Form 15. Subscription by Owners of Business on Executing Agreement with Promoters.

We, the undersigned, hereby subscribe for and agree to purchase (on the terms and conditions hereinafter stated) .... shares of the capital stock of the ...., a corporation to be hereafter organized under the laws of the state (or territory) of ...., having $....... of capital stock, divided into .... shares of $100 each, said stock to be delivered, fully paid and non-assessable, upon payment of the purchase-price, as hereinafter provided.

It is mutually agreed between the several subscribers hereto and .... promoter of said company that this subscription is conditioned upon *bona fide* contracts by solvent parties being obtained to purchase .... shares of the treasury stock of said company, hereinafter mentioned, to be paid for in cash at the rate of not less than $50 per share, and the organization of said company within thirty days from this date.

The shares of stock hereby subscribed are to be issued by said (*name of company*) fully paid and non-assessable, ... shares to A, ... shares to B and ...... shares to C, and are to be paid for in full by the conveyance by these subscribers to said (*name of company*) of the following described land: describing it), together with the flouring mill thereon situate, and all the personal property, business, good will and effects of, or pertaining to, the mill and the milling business heretofore carried on by the partnership firm of A, B and C, at said location, except (enumerate property reserved), the value of which property and good will so to be conveyed is hereby agreed to be $...... (*the face value of shares subscribed for*), and this subscription shall be binding only in case payment by the conveyance of said property is accepted by the company.

In consideration of the organization of such company and the exchange of shares of its stock for the milling property, as above provided, the undersigned subscribers agree to donate to said (*name of corporation*) .... shares of stock issued to them as above provided, fully paid and non-assessable, as follows: A, ... shares; B, ... shares; C, ... shares; the same to be placed in the treasury of the said company as treasury stock, and sold to provide a working capital.

In witness whereof the undersigned subscribers and said promoter have hereunto set their hands and seals this ...... day of ...., 19....

A................
B................
C................

Agreed to by the promoter of the company.

(Signed) ....

Form 16. Stock Subscription Given to Promoter.*

We, the undersigned, hereby subscribe for and agree to purchase (subject to the terms and conditions herein stated) the number of shares set opposite our respective names of the par value of $100 each of the treasury stock of ...., a corporation to be hereafter organized under the laws of the state (or territory) of ......, said stock to be delivered, fully paid and non-assessable, upon payment of the purchase-price, as hereinafter provided.

It is mutually agreed between the several subscribers hereto, and ...... promoter of said company, that the said subscription is conditioned upon *bona fide* subscriptions being obtained for ...... shares of the said treasury stock on the terms herein stated within thirty days from the date thereof.

We severally agree to accept said shares subscribed for and to make payment for them, at the rate of $50 for each share, to the treasurer of said company as soon as the said company is organized and its treasury stock, fully paid and non-assessable, is ready for delivery. (Dated) ...., 19....

NAMES.	ADDRESSES.	SHARES.	AMOUNT.
....	....	....	....
....	....	....	....

I agree to the above terms. (Signed by promoter.)

Form 17. Underwriting Agreement.

....

THE UNITED STATES SHIPBUILDING COMPANY.

A corporation to be organized under the laws of the state of New Jersey, either by that or some similar name, proposes to acquire the

---

*Note the difference between treasury and unissued stock.

plants and equipment of the following concerns, or their capital stocks, free from any liens:

The Union Iron Works	San Francisco, California.
The Bath Iron Works, Limited and The Hyde Windlass Company,	Bath, Maine.
The Crescent Ship Yard, and The Samuel L. Moore & Sons Co.	Elizabethport, New Jersey
The Eastern Shipbuilding Company	New London, Conn.
The Harlan & Hollingsworth Co	Wilmington, Delaware.
and	
The Canda Manufacturing Company	Carteret, New Jersey.

Underwriting Agreement.

For $9,000,000 Series A First Mortgage, Five Per Cent. Sinking Fund, Gold Bonds, due 1932, part of an authorized issue of $16,000,000, Bonds of $1,000 each, $5,500,000 being withdrawn from public issue for disposal under the Vendor's and Subscribers' Contracts, and $1,500,000 being Reserved in the Treasury of the Company. Additional Bonds may be issued only for the purpose of acquiring Additional Plants and Equipment and for Improvements and Betterments, upon such Terms and Conditions as shall be Approved by the Holders of a Majority of the Bonds under the Present Issue Outstanding at the Time of such Approval.

We, the undersigned, each for himself, with The Mercantile Trust Company, for itself and for the United States Shipbuilding Company, and to and with each other, agree to subscribe to, receive and pay for the amount of five per cent. first mortgage, sinking fund, gold bonds of the United States Shipbuilding Company of one thousand dollars each, set opposite our respective signatures hereto, at the price of $900 for each bond, 25 per cent. to be paid upon allotment and the balance upon the demand of The Mercantile Trust Company.

We further agree to receive and pay for any smaller amount than that subscribed for which may be allotted to us respectively.

The conditions of this underwriting agreement are as follows:

(1) That this agreement shall not be binding upon the undersigned unless the entire amount of $9,000,000 of bonds shall have been underwritten.

(2) That within such reasonable time as shall be fixed by The Mercantile Trust Company the said $9,000,000 of bonds, less any

amount withdrawn by the underwriters, as hereinafter set forth, will be offered to the public, through such banker or bankers or brokers as shall be designated by The Mercantile Trust Company, for subscription at not less than 95 per cent.

(3) With the consent of The Mercantile Trust Company, any other concern may be included in this combination, or others substituted therefor, provided the working efficiency or values are not lessened or impaired.

(4) That, if the amount of bonds subscribed and paid for upon such public issues be at least equal to the amount of bonds so offered to the public, then all liability under this agreement shall cease.

(5) That, in case the amount of bonds subscribed for upon such public offering shall be less than the total amount of bonds so offered to the public, or in case the bonds subscribed for upon such public issue shall not be paid for to an amount equal, at the rate of 95 per cent., to the total of such public offering, then such deficiency in subscriptions and payments will, upon the demand of The Mercantile Trust Company, be made good by the subscribers hereto in the manner aforesaid, *pro rata* in the proportion their subscriptions for bonds not withdrawn by them from public issue bear to the total amount of bonds so offered to the public.

(6) That each underwriter shall receive in preferred and common stock of the United States Shipbuilding Company 25 per cent. of the par value of the bonds hereby underwritten in each kind of stock, and also that all the proceeds, not to exceed 5 per cent., realized from the sale of the bonds at public issue in excess of 90 per cent., after deducting issue expenses, shall belong to the underwriters.

(7) That any underwriter shall have the option of withdrawing from the public issue any of the bonds hereby underwritten by him, provided that he notify The Mercantile Trust Company, five days prior to the date fixed for the public issue, that he elects to purchase said bonds, provided that, in the proportion of the bonds so purchased, he waives his said right to participate in the cash proceeds realized from the public issue.

(8) That no underwriter shall sell or offer for sale the bonds so purchased, nor any of the bonus shares he receives, until twelve months after the date of payment, without the consent of The Mercantile Trust Company.

New York, April 19, 1902.

NAME.	ADDRESS.	BONDS UNDERWRITTEN.
....	....	....
....	....	....
....	....	....

Form 18. Articles of Incorporation, New York Business Corporations Law.

The undersigned (three or more), all of whom are natural persons of full age, two-thirds of whom are citizens of the United States, and at least one of whom is a resident of the state of New York, hereby associate ourselves together as a corporation under the Business Corporations Law of the state of New York and certify:

1. The name of the corporation is ....

2. The purposes for which said corporation is formed are as follows: ....

3. The amount of capital stock of said corporation shall be .... dollars. (If any part is preferred, preferences must be stated.)

4. The capital stock shall consist of .... shares of .... dollars (*$5 to $100*) each and the amount of capital with which the said corporation will begin business is .... dollars (*not less than $500*).

5. The principal business office of said corporation shall be in the city (*town or village*) of ...., county of ...., state of New York.

6. The duration of said corporation shall be ....

7. The number of directors of said corporation shall be .... (not less than three).

8. The names and post office addresses of the directors of said corporation for the first year are as follows:

NAMES.	ADDRESSES.
....	....
....	....
....	....

9. The names and post office addresses of the subscribers to this certificate, and the number of shares of stock which each agrees to take in the corporation are as follows:

NAMES.	ADDRESSES.	SHARES.
....	....	....
....	....	....
....	....	....

10. (*Provisions may be added for the regulation of business and conduct of the corporation, and any limitation upon its powers and the powers of its directors and stockholders which does not exempt them from an obligation imposed by law.*)

IN WITNESS WHEREOF, we have made and signed this certificate in duplicate, this .... day of ...., 19....

....

....

....

STATE OF NEW YORK, COUNTY OF ...., SS:

Before me, a notary public of said county and state, personally appeared ...., ..., and ...., to me well known to be the persons described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the uses and purposes therein stated, this .... day of ...., 19.... ....,

(Seal.) Notary Public.

Form 19. Articles of Voluntary Association—Merchant, Etc., Indiana.

The undersigned hereby associate themselves together as a corporation under the laws of the state of Indiana for the incorporation of Voluntary Associations, upon the terms and conditions following:

1. The corporate name of this association shall be the .... company.

2. The capital stock of the association shall be of the amount of .... dollars and shall be divided into .... shares of one hundred dollars each.

3. The object and purpose of the association shall be .... (*The act, 1901, page 289, 1903, page 116, enumerates in twenty-six separate paragraphs the purposes for which such an association may be formed, and one of such paragraphs should be substantially copied here.*)

4. The proposed plan of doing business is to (*here state in general and comprehensive terms*).

5. The names of the incorporating members and their places of residence are as follows:

NAMES.	PLACES OF RESIDENCE.
JOHN SMITH	Indianapolis, Ind.
WILLIAM JONES	Chicago, Ill.
JAMES BROWN	Cincinnati, Ohio.

6. The principal place of business of the said association shall be at the city of .... in the state of ....

7. The term of existence of the said corporation shall be fifty years (*or any less number may be named*).

8. The corporate seal of the corporate organization shall be a round metal disk with the words .... (*usually the corporate name*) around the outer margin thereof and the word "seal" in the center thereof, so mounted that it may be used to impress said words in raised letters upon paper.

The directors who are to manage the business and prudential concerns of the association shall be elected annually by vote of the stockholders on the first Monday of .... in each year, beginning in the year 19.. Such meetings shall be held at the principal office of the company in the city of ...., state of ...., and each stockholder shall be allowed one vote in the selection of each director for each share of stock held by him. Immediately following the election of directors, the board of directors shall elect a president, a secretary and a treasurer, who shall have such duties and powers as may be given to them by the by-laws of the association or by the said board of directers.

10. The affairs of the association shall be managed and controlled by a board of three (*or any larger number*) directors. The following persons, to wit: (*naming them*) shall constitute the board of directors and manage the affairs of the association for the first year.

IN WITNESS WHEREOF we have hereunto set our hands and seals this .... day of ...., 19....

NAMES.	RESIDENCES.
....	....
....	....
....	....

STATE OF INDIANA, COUNTY OF ...., SS:

Before me, a notary public of said county and state, personally appeared ...., ..., and ...., and acknowledged the execution of the foregoing articles of incorporation.

Witness my hand and notarial seal this .... day of ...., 19..... My commission expires. ....

JOHN SMITH, Notary Public.

Form 20. Charter of the United States Steel Corporation.

(After setting out the action of the directors and stockholders amending the charter and the proposed amendments.)

C. That the certificate of incorporation of said United States Steel Corporation, as amended, shall read as follows:

Amended Certificate of Incorporation of United States Steel Corporation.

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the act of the legislature of the state of New Jersey, entitled "An Act Concerning Corporations" (Revision of 1896), and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

I. The name of the corporation is

United States Steel Corporation.

II. (Here follows the location of the principal office in New Jersey, and the name of the agent therein and in charge thereof.)

III. The objects for which the corporation are formed are:

To manufacture iron, steel manganese, coke, copper, lumber and other material, and all or any articles consisting, or partly consisting, of iron, steel, copper, wood, or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing coal or iron, manganese, stone or other ores, or oil, and any wood lands, or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone and other minerals and timber from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber, and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators, waterworks, gas works and electric works, viaducts, aqueducts, canals and other water-ways, and other means of transportation, and to sell the same or otherwise to dispose thereof, or to maintain and operate the same except that the company shall not maintain or operate any railroad or canal in the state of New Jersey.

To apply for, obtain, register, purchase, lease or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of, any trade-marks, trade-names, patents, inventions, improvements, and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes and the like, or any such property or rights.

To engage in any other manufacturing, mining, construction or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own and dispose of any and all property, assets, stocks, bonds and rights of any and every kind, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the state of New Jersey.

To acquire by purchase, subscription or otherwise, and to hold or to dispose of stocks, bonds or any other obligations of any corporation formed for, or then or theretofore engaged in or pursuing, any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or the obligations of any such corporation.

To hold for investment, or otherwise to use, sell or dispose of, any stock, bonds or other obligations of any such other corporation; to aid in any manner any corporation whose stock, bonds, or other obligations are held or in any manner guaranteed by the company, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stock, bonds or other obligations, or to do any acts or things designed for any such purpose; and while owner of any such stock, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting power thereon.

The business or purpose of the company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other states, and in territories, and in foreign countries, and may have one office, or more than one office, and keep the books of the company outside of the state of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property, either in or out of the state of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends, or bonds, or contracts, or other obligations; to make and perform contracts of any kind and description and in carrying on its business or for the purpose of attaining or furthering any of its objects, to do any and all other acts and things, and to exercise any and all other powers which a co-partnership or natural person could do and exercise, and which now or hereafter may be authorized by law.

IV. The total authorized capital stock of the corporation is eleven hundred million dollars ($1,100,000,000), divided into eleven million shares of the par value of one hundred dollars each. Of such total authorized capital stock, five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be preferred stock, and five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be common stock.

From time to time, the preferred stock and the common stock may be increased according to law and may be issued in such amounts and proportions as shall be determined by the board of directors, and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per cent. shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared and the company shall have paid such cumulative dividends for previous years, and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

V. The names and postoffice addresses of the incorporators, and the number of shares and of stock for which severally and respectively we do hereby subscribe (the aggregate of our said subscriptions being three thousand dollars, is the amount of the capital stock with which the corporation will commence business) are as follows:

(Here follow the names and postoffice addresses of each of the incorporators, and the number of shares of stock subscribed for by each.)

VI. The duration of the corporation shall be perpetual.

VII. The number of directors of the company shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

The number of the directors may be increased as may be provided in the by-laws. In the case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws by the directors or by the stockholders at an annual or special meeting; and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside of the state of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an annual meeting, the board of directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the act of the legislature of the state of New Jersey, passed March 22, 1901, amending the seventeenth section of the act concerning corporations (Revision of 1896); any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting, after due notice to them given, or required their consent in writing to be filed, may be taken upon the consent of and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors.

Any other officer or employe of the company may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the board of directors.

The board of directors by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and, to such extent as shall be provided by the by-laws, such committee shall have and may exercise all or any of the powers of the board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint any other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The board of directors may appoint not only other officers of the company, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer and of the secretary respectively.

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the company; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the company's stock as provided by law.

The board of directors shall from time to time determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them shall be open to the inspection of the stockholders, and no stockholders shall have any right to inspect any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors or by a resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 23d day of February, 1901.

(Signatures of Incorporators.)

(Acknowledgment.)

The written assent and signatures of all the incorporators and stockholders of the said United States Steel Corporation to the foregoing amendments and changes is hereto appended.

IN WITNESS WHEREOF, the said United States Steel Corporation has caused the certificate to be signed by its president and its secretary, and its corporate seal is hereto affixed, this first day of April, 1901.

(Signatures of President and Secretary, and corporate seal.)

(Acknowledgment.)

We, the undersigned, being all the incorporators and stockholders of the United States Steel Corporation, having at a meeting regularly called for that purpose, voted in favor of the changes and amendments set forth in the above certificate, do now, pursuant to law, hereby give our written consent to the said changes and alterations.

Witness our hands this 1st day of April, A. D. 1901.

(Here follow signatures of incorporators and stockholders.)

(Acknowledgment.)

Form 21. Certificate of Incorporation of the Wisconsin Edison Company, Incorporated. Common Stock Without Par Value; Preferred Stock, New York.

We, the undersigned, all being of full age and at least two-thirds being citizens of the United States of America, and at least one being a resident of the state of New York, desiring to form a corporation pursuant to the provisions of the Business Corporations Law of the state of New York, do hereby certify:

First. The name of the proposed corporation is The Wisconsin Edison Company, Incorporated.

Second. The purposes for which it is to be formed are as follows:

To acquire by purchase, subscription, or otherwise and to invest in, hold for investment or otherwise, and to trade and deal in and to use, sell, pledge or otherwise dispose of the stock, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations, and while owner of any such stocks, bonds and other evidences of indebtedness to exercise all the rights, powers and privileges of ownership, including the right to vote thereon for any and all purposes; to aid by loan, subsidy, guaranty or in any other manner whatsoever, so far as the same may be permitted in the case of corporations organized under the Business Corporations Law, any corporation whose stocks, bonds, securities or other obligations are in any manner held or guaranteed, and to do any and all other acts or things for the preservation, protection, improvement or enhancement in value of any such stocks, bonds, securities or other obligations; and to do all and any such acts or things designed to accomplish any such purpose.

To acquire, hold, own, dispose and generally deal in grants, concessions, franchises and contracts of every kind, to cause to be formed, to promote and to aid in any way in the formation of any corporation, domestic or foreign.

To act as financial or business agent for domestic and foreign corporations, individuals, partnerships, associations, states, governments or other bodies.

To borrow money, to issue bonds, debentures, notes and other obligations, secured or unsecured, of the corporation, from time to time, for moneys borrowed, or in payment for property acquired, or for any of the other objects or purposes of the corporation, or for any of the objects of its business; to secure the same by mortgage or mortgages, or deed or deeds of trust, or pledge or other lien upon any or all of the property, rights, privileges or franchises of the corporation, wheresoever situated, acquired or to be acquired; to confer upon the holders of any debenture or other bonds of the corporation, secured or unsecured, the right to convert the principal thereof into preferred or common stock of the corporation upon such terms and conditions as shall be fixed by the board of directors; to sell, pledge or otherwise dispose of any or all debenture or other bonds, notes and other obligations in such manner and upon such terms as the board of directors may deem judicious; and to guarantee the payment of any dividends upon stocks, or the principal or interest upon bonds, or the contracts or other obligations of any corporation or individual, so far as the same may be permitted in the case of corporations organized under the Business Corporations Law.

To conduct its business and all or any of its branches, so far as permitted by law in the state of New York and in other states of the United States of America and in the territories and the District of Columbia and in any and all dependencies, colonies or possessions of the United States of America and foreign countries; and for and in connection with such business to hold, possess, purchase, mortgage and convey real and personal property, and to maintain offices and agencies either within or anywhere without the state of New York.

In general to do any and all things and exercise any and all powers which may now or hereafter be lawful for the corporation to do or exercise under and in pursuance of the Business Corporations Law of the state of New York, or of any other law that may be now or hereafter applicable to the corporation.

Third. The number of shares of capital stock that may be issued by said corporation is three hundred thousand (300,000), of which one hundred thousand (100,000) of the amount or par value of one hundred dollars ($100) each are to be preferred stock, and two hundred thousand (200,000) which shall have no nominal or par value are to be common stock.

Fourth. The holders of the preferred stock shall be entitled to cumulative dividends thereon at the rate of six dollars ($6) per share or six per centum of the amount or par value for each and every fiscal year of the life of the corporation and no more, payable out of any and all surplus or net profits, quarterly, half-yearly or yearly, as and when declared by the board of directors, before any dividends shall be declared, set apart for, or paid upon the common stock of the corporation. Said dividends on the preferred stock shall be cumulative, so that if the corporation shall fail in any fiscal year to pay such dividends on all of the issued and outstanding preferred stock, such deficiency in the dividends shall be fully paid, but without interest, before any dividends shall be paid or set apart on the common stock. Subject to the foregoing provisions said preferred stock shall not be entitled to participate in any other or additional earnings or profits of the corporation.

In the event of the dissolution or liquidation of the corporation, or a sale of all its assets (whether voluntary or involuntary) or in event of its insolvency or upon any distribution of its capital, there shall be paid to the holders of the preferred stock the par value thereof, to wit, one hundred dollars ($100) per share and the amount of all unpaid accrued dividends thereon, before any sum shall be paid or any assets distributed among the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereon, the remaining assets and funds of the corporation shall be divided among and paid to the holders of the common stock according to their respective shares.

The board of directors may in their discretion declare and pay dividends on the common stock concurrently with dividends on the preferred stock, for any dividend period of any fiscal year when such dividends are applicable to the common stock; provided that all accumulated dividends on the preferred stock for all previous fiscal years and all dividends on the preferred stock for previous dividend periods for that fiscal year shall have been paid in full.

The whole of the preferred stock may be redeemed on any dividend day at the option of the board of directors, upon sixty (60) days' notice by mail to the holders of record of such stock as may be prescribed by the by-laws or, in the absence of any by-law upon the subject, by resolution of its board of directors, by paying for each share of the preferred stock one hundred and fifteen dollars ($115) in cash, and in addition thereto all unpaid dividends accrued thereon at the date fixed for such redemption.

From time to time the preferred stock and the common stock may be increased according to law and may be issued in such amounts and proportions as shall be determined by the board of directors and as may be prescribed by law.

Fifth. The amount of capital with which the corporation will carry on business is twelve million dollars ($12,000,000).

Sixth. The corporation may issue and may sell its authorized shares from time to time for such consideration as may from time to time be fixed by the board of directors, and the consideration so fixed for shares of the preferred stock may be either greater or less than their par value.

Seventh. The principal business office of the corporation is to be located in the borough of Manhattan, city, county and state of New York.

Eighth. The duration of the corporation is to be perpetual.

Ninth. The number of its directors is to be nine. Three directors shall be elected in each year, and the term of office of each director, except as provided in the next section hereof, shall be three years, or until his successor shall be chosen.

Tenth. The names and post office addresses of the directors for the first year and the term of office of each are as follows:

(Here follow names and addresses of directors.)

Eleventh. The names and post office addresses of the subscribers to this certificate, and the number of shares of stock which each agrees to take in the corporation are as follows:

NAMES	ADDRESSES	NO. OF SHARES

(Here follow names and addresses of subscribers.)

Twelfth. No preferred stockholder shall be entitled to subscribe for, purchase, or receive any part of any new or additional issue of stock, or of any issue of bonds or debentures convertible into stock.

The board of directors may appoint an Executive Committee from among their number, which committee, to the extent provided in the by-laws of the corporation, shall have and may exercise all of the powers of the board of directors in the management of the business and affairs of the corporation during the intervals between the meetings of the board of directors, so far as may be permitted by law.

In witness whereof, we have made, signed and acknowledged this certificate this 4th day of November, 1912.

(Here follow names of subscribers.)

Form 22. Certificate of Incorporation of United Zinc Smelting Corporation. Shares Without Par Value.

We, the undersigned, all being persons of full age and at least two-thirds being citizens of the United States of America and at least one of us being a resident of the state of New York, desiring to form a stock corporation pursuant to the provisions of the Business Corporations Law of the state of New York, do hereby certify that:

First. The name of the proposed corporation is:

"UNITED ZINC SMELTING CORPORATION."

Second. The purposes for which it is to be formed are as follows:

(a) To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in zinc, lead, gold, silver, copper, brass, iron, steel, coal, and in all kinds of ores, metals and minerals, oils, petroleum and natural gas, acids and chemicals, and in the products and by-products thereof of every kind and description, and by whatsoever processes, the same can be or may hereafter be produced; and generally and without limit as to amount, to buy, sell, exchange, lease, acquire and deal in lands, mines and minerals, rights and claims, and in the above specified products and to conduct all business pertaining to the foregoing within the state of New York or elsewhere in the United States, its insular possessions and foreign countries.

(b) To carry on as principals, agents, commission merchants or consignees, the business of mining, milling, concentrating, converting, smelting, treating, refining, buying, selling, exchanging, manufacturing, and dealing in the above specified products, or either of them, and all materials used in the manufacture of each, any and all of such articles, and to carry on as such principals, agents, commission merchants or consignees any other business which in the judgment of the Board of Directors of the company may be conveniently conducted in conjunction with any of the matters aforesaid, so far as such business is one that may be carried on by a corporation organized under the Business Corporations Law.

(c) To manufacture, produce, purchase or otherwise acquire, and to sell, dispose of and deal in and with, and to store, transport and distribute goods, wares and merchandise, and property of any and every class and description, so far as such business is one that may be carried on by a corporation organized under the Business Corporations Law.

(d) To purchase or otherwise acquire, hold, own, occupy, develop, improve, sell, dispose of and convey real property, and any and every interest therein, either within or without the state of New York, and anywhere in the world; to extract, remove, produce or prepare from any such property any animal, vegetable, mineral, acid or other product or material therein or thereon, either by agricultural pursuits, mining, quarrying, smelting, concentrating, refining, or by any other method or means now known or that may hereafter be discovered or invented, and to avail itself in every manner of each and every resource of such property by reducing it to proper form, and by use, sale or other disposition thereof.

(e) To engage in any kind of manufacturing, mining, milling, quarrying, concentrating, smelting, refining, building, construction and industrial operations, in the development and utilization of every kind of power and the acquirement, construction, use, operation, sale and other disposition of all kinds of machinery, plants, smelters, factories, refineries, warehouses, elevators, buildings and other structures, boats, ships and other transportation facilities to be used in the private business of the corporation only, and not for hire, all so far as the same may be permitted to a corporation organized under the Business Corporations Law.

(f) To purchase or otherwise acquire the business, good will, rights and property of any person, firm, association or corporation engaged in any business similar to that of this company, and to pay therefor in cash, property, stock or bonds of this company or otherwise, and to hold and in any manner to dispose of the whole or any part of the property so acquired, and to conduct, carry on, operate, manage, control, improve or develop the whole or any part of the business so acquired, so far as such business is one that may be carried on by a corporation organized under the Business Corporations Law.

(g) To apply for, obtain, register, purchase, lease or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of, any trade-marks, trade-names, brands, copyrights, concessions, patents, licenses, inventions, formulae, improvements and processes used in connection with or secured under letters patent of the United States, or any other country, or otherwise, and to use, exercise, develop, grant licenses in respect of or otherwise to turn to account any such trade-marks, trade-names, brands, copyrights, concessions, patents, licenses, inventions, formulae, improvements and processes and the like, or any such property or rights.

(h) To cause or allow the legal title, estate and interest in any property acquired, established or carried on by the company to remain or be vested or registered in the name of or carried on by any person or persons, or any other company or companies, foreign or domestic, formed or to be formed, or as agents or nominees of this company, or upon any other terms or conditions which the board of directors may consider for the benefit of this company, and to manage the affairs or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise howsoever, and to exercise all or any of the rights of holders of shares, stocks, or securities thereof.

(i) To acquire by purchase, subscription, or otherwise invest in, hold for investment or otherwise, and to sell, exchange, mortgage, pledge, or otherwise dispose of, and deal in, all stocks, bonds and other evidences of indebtedness of any corporation, public, quasi-public, or private, domestic or foreign, and all trust or other certificates of, or receipts evidencing interest in any such securities; to issue in exchange therefor its own stocks, bonds or other obligations; and while owner of any such stock, bonds and other evidences of indebtedness or interest therein, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon for any and all purposes; to purchase or otherwise acquire for retirement only, pro rata from its stockholders, its own stock, or other evidences of indebtedness.

(j) To make advances or loans, upon the pledge of securities to be bought, sold or otherwise dealt in, or without security, so far as may be permitted by law.

(k) To aid by loan, subsidy, guaranty, or in any other manner whatsoever, any corporation whose stocks, bonds, securities or other obligations are in any manner held or guaranteed by this corporation, and to do any and all other acts or things toward the preservation, protection, improvement or enhancement in value, of any such stocks, bonds, securities or other obligations, and to do all and any such acts or things designed to accomplish any such purpose, so far as may be permitted to corporations organized under the Business Corporations Law.

(l) To acquire, hold, own, and dispose of grants, concessions, and franchises, or interests therein; to cause to be formed, merged or reorganized, and to promote and aid in any way permitted by law, the formation, merger or reorganization of any corporation, domestic or foreign; to enter into contracts of underwriting of the securities of any other corporation, state, government or municipality, domestic or foreign, and to buy, sell and deal in the same, or any interest therein, and to act as manager of such underwriting agreements, all so far as the same may be permitted to corporations organized under the Business Corporations Law.

(m) To act as financial or business agent, general or special, for domestic corporations, individuals, partnerships, associations, states, governments or other bodies, so far as may be permitted to a corporation organized under the Business Corporations Law.

(n) To borrow or raise money for the purposes of the corporation, to secure the same and any interest thereon, and for that purpose or any other purpose permitted by law, and subject to the restrictions and conditions thereby imposed, to mortgage and charge all or any part of the present or after-acquired property, rights and franchises of the corporation, and to issue, sell, pledge or otherwise dispose of its notes, bonds, debentures and other evidences of indebtedness.

(o) So far as may be permitted by law, to buy or otherwise acquire, hold, lease, sell, exchange, mortgage, pledge, or otherwise dispose of, any property, real or personal, rights, franchises or good-will, which the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

(p) In general, to do any and all things and to exercise any and all powers necessary or advisable to accomplish one or more of the purposes of the corporation, or which shall at any time appear to be conducive to, or for the benefit of said corporation in connection therewith, which may now or hereafter be lawful for the corporation to do, or exercise, under and in pursuance of the Business Corporations Law of the state of New York, or of any other law that may now or hereafter be applicable to the corporation.

(q) To conduct its business in any or all of its branches, so far as permitted by law, in the state of New York, and in any other state of the United States of America, and in any territory, dependency, colony, or possession thereof, and in the District of Columbia, and in any foreign country, and in connection therewith, to hold, possess, purchase, mortgage and convey real and personal property, and to maintain offices and agencies, either within or anywhere without the state of New York.

Third. The number of shares of capital stock that may be issued by the corporation is six hundred thousand (600,000), all of which are to be without nominal or par value.

Fourth. The amount of capital with which said corporation will carry on its business is three million dollars ($3,000,000).

Fifth. The corporation may issue and may sell its shares, whether now or hereafter authorized, from time to time in such amounts and for such consideration, in accordance with the statutes of the state of New York, as may from time to time be fixed by the board of directors, or by the consent of the holders of three-fourths of the shares then outstanding given at a special meeting called for that purpose in such manner as shall be prescribed by the by-laws; and any and all shares so issued shall be deemed fully paid and nonassessable, and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereof.

Sixth. The principal business office of the company shall be located in the town of Eddyville, county of Ulster, in the state of New York.

Seventh. The duration of said corporation shall be perpetual.

Eighth. The number of directors of said corporation shall be nine, no one of whom need be a stockholder of the corporation.

Ninth. The names and post office addresses of the directors for the first year are as follows:

NAMES.	POST OFFICE ADDRESSES.
Joseph F. Curtin,	36 Nassau Street, New York, N. Y.
Walter S. Haviland,	111 Broadway, New York, N. Y.
Gustave Ross,	115 Broadway, New York, N. Y.
Anselm P. Anderson,	34 Nassau Street, New York, N. Y.
K. R. Norton,	34 Nassau Street, New York, N. Y.
F. Freeman,	34 Nassau Street, New York, N. Y.
Clifford Bucknam,	111 Broadway, New York, N. Y.
Guy P. Billon,	111 Broadway, New York, N. Y.
H. Nicholas Edwards,	111 Broadway, New York, N. Y.

Tenth. The names and post office addresses of the subscribers to the certificate and the number of shares which each agrees to take in said corporation are as follows:

NAMES.	POST OFFICE ADDRESSES.	NO. OF SHARES.
Joseph F. Curtin,	36 Nassau Street, New York, N. Y.	1
Anselm P. Anderson,	34 Nassau Street, New York, N. Y.	1
K. R. Norton,	34 Nassau Street, New York, N. Y.	1

Eleventh. The Board of Directors may appoint an executive committee from among their number, which committee, to the extent and in the manner provided in the by-laws of the corporation, shall have and may exercise all of the powers of the board of directors in the management of the business and affairs of the corporation during the intervals between the meetings of the Board of Directors, so far as may be permitted by law.

Twelfth. The by-laws of the corporation shall be subject to amendment or alteration only with the consent of the holders of three-fourths of the shares outstanding given at a meeting called for that purpose in such manner as shall be prescribed by the by-laws.

Thirteenth. At all elections of directors, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, or he may cast all of such votes for a single director, or may distribute them among the number to be voted for or any two or more of them as he may see fit.

In witness whereof we have made and signed this certificate, in duplicate, the 17th day of April, in the year one thousand nine hundred and sixteen.

Joseph F. Curtin (L. S.)
Anselm P. Anderson (L. S.)
K. R. Norton (L. S.)

State of New York, County of New York, ss:

On this 17th day of April, in the year one thousand nine hundred and sixteen, before me personally came Joseph F. Curtin, Anselm P. Anderson and K. R. Norton, to me known and known to me to be the persons described in and who executed the foregoing certificate of incorporation, and they severally acknowledged that they executed the same for the uses and purposes therein mentioned.

N. Raymond Heater,
(Seal.) Notary Public, Kings Co., No. 200.
Certificate filed in N. Y. Co., No. 257.

SHARES WITHOUT PAR VALUE. DISCUSSION RELATIVE TO THE TWO FOREGOING FORMS.

It is coming to be recognized that the naming of a par value may be confusing and that after a corporation is organized, it is practically meaningless. Even at first, stock may be sold below or above par, and thereafter it represents only a fractional interest of one kind or another in the corporation. In few instances is the capital stock of a corporation a fair indication of the value of its tangible and intangible assets. The various practices of promoters and the fortunes and vicissitudes of business work to make the actual value different from the nominal capitalization. The shares follow the variations of the actual value of the whole business. That a share is ostensibly a hundredth part of the total capital means nothing and is deceptive. That a share is the thousandth, ten thousandth or ten millionth part of the whole business expresses the fact. A share nominally worth one hundred dollars ($100) may be worth one dollar ($1) or three hundred dollars ($300) or one thousand dollars ($1,000). There is no reason for calling a share a fifty-dollar ($50) share or a hundred-dollar ($100) share; the only important thing is that it shall represent a certain specified fractional part of the net value of the corporation. New York has recognized these facts and in 1912 passed a law by which ordinary business corporations, excluding moneyed corporations and those under the jurisdiction of public service commissions, can be formed without assigning any nominal or par value to the stock, except preferred stock having a preference as to principal, by stating in the certificate of incorporation the number of shares that may be issued by the corporation and, if any such shares be preferred, the preferences thereof. If some shares have a preference as to principal, the certificate shall state the amount of such stock and the character of the preference and the amount of each share, which shall be five dollars ($5) or some multiple of five dollars up to one hundred dollars ($100), but not more. The certificate shall state also the amount of capital with which the corporation will carry on business, which amount shall not be less than the amount of preferred stock, if any, authorized to be issued with a preference as to principal, and in addition thereto "a sum equivalent to five dollars ($5) or to some multiple of five dollars for every share authorized to be issued other than such preferred stock," the capital to be not less than five hundred dollars ($500). Such statements on the certificate shall be in lieu of any statements prescribed by the law under which the corporation shall have been formed or reorganized as to the amount or the maximum amount of its capital stock or the number of shares into which it shall be divided, or of the amount of the par value of the shares. Each share of such stock without par value shall be equal to every other share of such stock, subject to preferences given preferred stock, if such is to be issued. Every certificate for such shares shall have plainly written or printed upon its face the number of such shares it represents and the number of such shares the corporation is authorized to issue, and no certificate shall express any nominal or par value of the shares. Preferred certificates shall state the amount which the holders shall receive on account of principal, if any, and also other preferences. Shares may be sold for such consideration as is prescribed in the certificate of incorporation or as the directors may determine under authority of the certificate or by consent of two-thirds of the holders of each class of shares outstanding. Any and all shares of such stock shall be deemed fully paid and non-assessable and its holders shall not be liable either to the corporation or its creditors. Corporations with such stock shall not begin business or incur any debts until the amount of capital stated in the certificate of incorporation shall have been fully paid in money or in property at its actual value. The organization tax on shares without designated monetary value shall be at the rate of five cents on each of such shares.

An act modeled closely on the New York act, but not excluding public service companies from the provisions, was passed by the legislature of Pennsylvania in 1913, but was vetoed by the governor. Maryland, in revising her corporation laws in 1916, has followed the example of New York and has provided for shares without par value, other than stock preferred as to dividends which is subject to redemption and stock preferred as to a distributive share of the assets of the corporation on its dissolution. Any such corporation here may dispose of its capital stock for such consideration in money, services or property as it sees fit. Delaware, in March, 1917, passed a law providing for shares without par value. Here the fee is one cent per share for all shares up to 20,000 and for all above that amount, one-half cent per share, with a minimum fee of ten dollars ($10). A Delaware corporation company says that stock without par value can be issued full paid in any desired amounts for contracts, patents, mines, oil leases, services and similar considerations whose real value generally can not be estimated accurately. The process is merely an exchange of property for shares without any dollar mark of value being placed upon the property or the shares and it is not open to question.

The commissioners on uniform state laws, in national conference, August, 1914, submitted the fourth tentative draft of an act to make uniform the law of business corporations. In providing for shares without par value, the following explanation is submitted in a note:

"The purpose of removing the par valuation from certificates of shares of stock was to make the certificates show more clearly the real and basic value of a share, as representing a right of proportionate ownership in the net earnings of the corporation and in the unliquidated and unstable sum describable as the excess of assets over liabilities. The plausible hypothesis upon which the plan is based is that the designation of a par value on the face of the certificates tends to produce upon the mind of an intending purchaser of shares the impression that the return upon his investment as expressed in dividends should be an adequate percentage of the value of the stock, as shown on its face by the par valuation. The elimination of any designated or nominal par valuation would remove this fictitious standard of value and every prospective purchaser would then be required to get an estimate of the value of the property from a source other than the sums named on the certificate, or else buy the shares admittedly as a gamble. The owner could not expect or demand returns upon a fictitious basis. The scheme outlined would seem to be especially feasible in the reorganization of insolvent corporations, as providing an escape from the manifestly absurd issuance of stock of millions of dollars of nominal value upon the reorganization of a corporation not able to earn interest upon its outstanding obligations."

After Mr. Francis Lynde Stetson made his report for the special committee on corporation law of the New York State Bar Association in 1911, the president of the association, Senator Elihu Root, said, "I should be very glad, if the association will permit me without leaving the chair, to make a confession of faith. I am warmly in favor of this proposed bill. I do not think there is any better rule to be applied to the affairs of life, to all the laws and practices which enter into government than the rule of making them conform to the truth as we find it to be. If a law or a practice does not conform to the reality of things it is false and it makes trouble and you can not prevent it making trouble. If conditions change so that laws or practices which at one time conformed to the affairs of life no longer conform to them, then the time has come to change the laws and practices. Application of that rule simple, easy to apply, is the best solution of a large part of the questions that we discuss and discuss. I have been in the way of seeing the many misapprehensions that exist regarding the rights and duties of corporations in regard to their stock based upon the fact that its par value is fixed upon the stock and that a different value is fixed in the market. The people of the country, a large part of them, are continually going wrong in their ideas about the rights and wrongs of the business which is conducted by corporations because of this false representation, a representation that is necessarily false as to the value of corporate assets and I think the adoption of this plan of permitting corporations to refrain from making any representation at all about what their assets are worth affords a means of avoiding really very serious faults and very serious misunderstandings. I see no practical obstacles to putting the plan into effect and I think it certainly is good sense and good morals."

The report of the committee on corporation law, consisting of Francis Lynde Stetson, Victor Morawetz and Louis Marshall, made at the thirty-fifth annual meeting of the New York State Bar Association (1912) and entitled, "Stock Without the Dollar Mark," quoted Mr. Stevens, chairman of the New York Public Service Commission of the Second District, who rendered an opinion in the matter of the New York Central and Hudson River Railroad Company for leave to acquire certain stocks, and presented the advantage of a general measure for stock without par, especially with reference to railroad companies. In the extract quoted, Mr. Stevens said, "The harmfulness of excessive issues of capital stock of corporations serving the public arises from the fact that stock of a given face value has not behind it property equal in actual value to the face value of the stock. The result is that the owners of the stock naturally assume the value of the corporate assets to be at least equal to the face value of the stock, demand an adequate return upon the same, and in an effort to secure such return both demand excessive prices for services rendered and unduly impair and cheapen the service. The stock in the natural course of business falls into the hands of *bona fide* purchasers, who buy the same upon the assumption that it is issued dollar for dollar of value. Any effort to reduce prices for services rendered after stocks have fallen into the hands of such holders is fought, as tending to impair the value of existing securities and unsettling the basis of all corporate transactions. This last trouble arises from regarding the share of stock as representing the value to an amount equal to its face value. Were all stock issued for full value, this might be true, for a brief interval, but in the practical course of business such equality rarely exists. In a successful business the value of the stock enhances; in an unsuccessful business it depreciates. It can not well happen that the value of property invested in a going enterprise will remain of the same value permanently, or even for any considerable period.

"The fact is, a share of stock represents only a given fractional part of the assets of the corporation. If the entire capital stock is one hundred thousand dollars, divided into shares of one hundred dollars each, one share is in fact no more than the evidence of ownership of a one-thousandth part of the corporate assets upon final dissolution and division, and a right to a one-thousandth part of any dividend which may be declared. It has not any direct proper value beyond these two rights. If no dividend can properly be declared, the stock has no value as evidence of a dividend right. This dividend right is simply an ownership of a given part of the net earning power of the business. To say that stock is entitled to any given rate of dividend is a logical absurdity—a confusion in language—since it is only evidence of a right to another and vastly different thing, namely, the right to a proportional part of the net earnings of the business. If once the public mind could be brought to regard shares of stock not as property in themselves, but as evidence of a right in property, we might hope to be rid of the deceptive notion that the par value of a share of stock is the slightest evidence of its real value, or is any evidence of the dividend returns to which the owner is entitled.

"It may well be considered a matter worthy of grave reflection whether in the case of at least all corporations hereafter organized a certificate of stock should have no par value, but should state only that the owner is entitled to a named proportional interest in the corporation. Every prospective purchaser would then be required to get a notion of the value of the property from a source other than the sums named on the certificate. The owner could not expect or demand returns upon a fictitious basis. The real would supersede the unreal in most investigations as to corporate values."

The report of the same committee also quotes the report of the Railroad Securities Commission (Messrs. Hadley, Judson, Strauss, Fisher and Meyer), which was transmitted to Congress, Dec. 8, 1911, as follows:

"We do not believe that the retention of the hundred dollar mark, or any other dollar mark, upon the face of the share of stock, is of essential importance. We are ready to recommend that the law should encourage the creation of companies whose shares have no par value, and permit existing companies to change their stock into shares without par value whenever their convenience requires it. After such conversion any new shares could be sold at such price as was deemed desirable by the board of directors, with the requirement of publicity as to the proceeds of the sale of such shares and as to the disposition thereof; giving to the old shareholders, except in some cases of reorganization or consolidation, prior rights to subscribe *pro rata,* if they so desired, in proportion to the amount of their holdings.

"As between the two alternatives of permitting the issue of stock below par, or authorizing the creation of shares without par value, the latter seems to this commission the preferable one. It is true that it will be less easy to introduce than the other, because it is less in accord with existing business habits and usages; but it has the cardinal merit of accuracy. It makes no claims that the share thus issued is anything more than a participation certificate.

"The objection to the creation of shares without par value are two in number: First, that their issue will permit inflation, by making it easy to create an excessive number of shares; and second, that it will produce a division of roads into two classes, those whose shares have a par value and those whose shares have not. The second of these objections does not appear to be a very serious one. There are listed on the stock exchanges of today, side by side with one another, shares of the par value of one hundred dollars, shares of the par value of fifty dollars, shares with very much smaller par value, and a few, like the Great Northern Ore Certificates, with no par value at all.* The share sells in each case simply

Number 3464. Shares 100.

GREAT NORTHERN IRON ORE PROPERTIES.

Trustees' Certificate of Beneficial Interest.

The undersigned, as trustees under a certain indenture, entered into between them and the Lake Superior Company, Limited, on the seventh day of December, A. D. one thousand nine hundred and six, do hereby certify that .... is the owner of one hundred shares of the beneficial interest therein specifically described. This certificate is transferable only upon the books of the trustees in person or by attorney and upon the surrender of this certificate. This certificate shall not become valid until countersigned by the Register of Transfers.

In witness whereof, the trustees have signed this certificate this 23d day of March, A. D. 1907.

....	By	Trustees and as attor-
....	(sd)	neys for the other
Trustees.	(sd)	trustees. A. D. 1907.

Countersigned and registered this .... day of ...., A. D. 1907.

Manhattan Trust Company,
Registrar of Transfers,
By ....,
Secretary.

for what the public supposes it to be worth as a share. The danger of inflation deserves more serious consideration. We believe, however, that it is more apparent than real, because shareholders will be jealous of permitting other shareholders to acquire shares in the association except at full market value, and will not permit the issue of such shares to themselves at prices so low as seriously to impair the market or other value of their holdings. Shares, either with or without par value, and whether sold at par or above par, or below it, should, except in cases of consolidation and reorganization, be offered in the first instance to existing shareholders *pro rata.*

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*Total Number of Shares, 1,500,000.

"The issue of stock without par value offers special facilities for consolidation and reorganization. Where two roads have consolidated whose shares have different market values, it has been the custom to equalize the difference by the issue of extra shares of the consolidated company to the owners of the higher priced stock. This practice has always tended to produce increase of capital issues, and may readily cause the new stock to be issued for a consideration less than its par value. The only alternative was to scale down some of the old stocks; and this often involved serious difficulties, both of business policy and of law. By the simple expedient of omitting the dollar mark from the new shares, the number can be adjusted to the demands of financial convenience, without danger of misrepresentation or suspicion of unfairness to anyone.

"In the case of reorganizations, the advantage of shares without par value is even more obvious. It is here that the necessity and justice of getting money from stockholders is greatest. It is here that the impossibility of getting them to pay par for new shares is more conspicuous. We believe that in such cases the public interest would be subserved and the speedy rehabilitation of the roads promoted, by requiring the conversion of the common stock and encouraging the conversion of the preferred stock into shares without par value; the certificates simply indicating the proportionate or preferential claims of the holders upon assets and upon such profits as might from time to time be earned.

"All of these considerations seem to apply with equal force to the securities of railroads under state incorporations, and we believe the laws of the several states could, with advantage, be modified so as to provide for the issuance of stock without par value."

Mr. Frederick Strauss, of the Railroad Securities Commission, laid special stress on the point that so far as public service corporations are concerned the present method of insisting that stock shall be fully paid according to its par value and that the bonds may be sold at a discount is exactly the wrong thing to do. He says if the fixed obligations of a corporation, as to which insolvency may be the consequence of a default, be forced out at a discount in a greater amount than is necessary in order to raise required capital—a greater amount than would be necessary under proper conditions—while the junior or the stock interest can not come out except for full payment in money of the par value, we have this curious result: a corporation which becomes insolvent involving consequent disaster to the community, only by default upon fixed obligations and never because of failure to pay dividends, is forced to issue bonds at a discount because the annexation of a par value to the stock requires its issue at par, while bonds come out at any price, to such an amount as to involve subsequent insolvency and disaster to the community.

Mr. Stetson says this can be relieved by reversing the process and placing some limitation upon the issue price of bonds which has been done in effect in New York by a requirement that the issue price of certain bonds shall be determined by the Public Service Commission. But as to stock, says Mr. Stetson, the only way that we can relieve the difficulty is by letting the stock represent merely a proportion, or aliquot interest in the entire capital of the corporation.

An important consideration in the law of partnership and unincorporated associations that has been omitted from the corporate form of business enterprise, to its detriment, is the right to divide and apportion the respective interests of the persons engaged in the enterprise on such conditions as the parties may agree, regardless of the contribution each makes to the firm's or association's capital. In the corporation, theoretically each person interested must contribute to the capital either money, property or services in exact proportion to the capital stock issued to him. Practically, stock is issued to promoters and organizers for the brains they have put into the enterprise and constitutes an interest in the future of the business, or as "a share in the equity," as bankers sometimes express it. This stock is popularly known as "watered stock," but it is the same kind of interest a man has in a partnership when he puts his brains and experience in the business against another man's capital and secures a share in the profits on that account. Legal and economic authorities are coming to hold any law that regards corporate capital as the only thing in the corporation which is responsible for profits and dividends, that makes a proper interest in the business depend wholly on the proportionate contributions to the capital, as unjust and inadequate. The practice of issuing to promoters as full paid and non-assessable stock which represents their future interest in the business is a regrettable subterfuge made necessary by our stilted conception of corporate possibilities, our refusal to recognize the true worth of an honest promoter's efforts. To quote Mr. Frederick Strauss again:

"What none of the critics of 'watered stock' seem to take into account is that on the Continent of Europe the great banks, with their enormous capital and surplus, and their fixed deposits, carry new projects until the earnings thereof have reached the desired point, and then the actually full-paid shares are sold to investors at a high premium; thus the promoters and the sustainers of these enterprises during their infancy reap a large profit, and the capital of the banks is free once more for new ventures; but here the banks can not do this, and the means of private bankers, however great, would be entirely insufficient for the purpose. Of course, no prudent bank or banker here would use deposits for this purpose, banking conditions being entirely different from those abroad, and the imprudent ones that have attempted to do this have usually come to grief. The economic necessity that capital should be set free at the earliest possible moment to do new work is the cause of the issue in this country of so-called 'watered stock' and the advocacy of shares 'without the dollar mark.' This mobility of capital is a national asset."

It is true, of course, that some overcapitalizations are wilfully fraudulent and misleading, but that is true of the smaller per cent. of them. With only the ignorant is it true that the par value on a share deceives the purchasers as to its true value. Yet, if stock says on its face that each share represents the contribution of a certain amount of money or its equivalent, that should be true in fact. Notwithstanding, the issue of watered stock often is the result of an actual business and economic need. It is true that watered stock often is issued to conceal profits and the practice of issuing large amounts of stock for this purpose is largely responsible for the growing popular idea that five or six per cent. upon the actual capital investment or upon the present value of the tangible assets is a sufficient legitimate return upon public service businesses. Legal interest rates represent popular judgment as expressed through legislatures as to the reasonable worth of money loaned on safe security, the borrower to return all the principal and pay interest as well. Such rates have no bearing as to the proper profits and payments to partners in a business. Neither should they determine the proper return for corporate capital. For, as Morawetz on Corporations says, "The statement that a corporation is an artificial person, or entity, apart from its members, is merely a description, in figurative language, of a corporation viewed as a collective body; a corporation is really an association of persons, and no judicial dictum or legislative enactment can alter this fact." The corporation is simply an amplification of the common-law partnership, to meet the requirements of large and permanent enterprises in which large numbers of persons engage, without the personal responsibilities and liabilities attaching to partnerships. Mr. Edward M. Shepard said, "Stockwatering has seemed to be—if, indeed, it has not been—a sort of confession that profits ought not to exceed such a rate (five or six per cent.) of interest." If a share of stock represents merely a proportionate interest in the business, as it truly would do if issued without nominal or par value, and if the actual capital (not shares, with their supposed value) were truthfully stated and published, much of the misunderstanding would disappear and the corporations would appear in a better light.

Several hundred corporations having shares without par value have been formed under the New York law. It is said that investors, bankers and managers of the Stock Exchange are pleased with the law and its results. It is yet too early to say whether the new plan will carry or make more possible any economic or social disadvantages. It would appear that it will be of public advantage in the respects mentioned. Where stock is watered for the purpose of concealing unreasonable profits and large dividends, a corporation with a large nominal capital stock may seem to be making only five or six per cent., whereas it may be making twenty-five or thirty per cent. on the actual capital employed in the business. About the only discouragement to such excessive capitalization now is an annual franchise tax based on nominal capitalization. And as it is properly measured more with respect to honest business (being actually excessive as to this) it is generally insufficient to accomplish the results indicated here. It may be a time will come when common shares will be prohibited from having a par value. This tendency seems to be a simplification in the right direction and will be of service not only from the investment and regulative standpoint, but also from the standpoint of the more lately developed principles of taxation.

Form 23. Stock Clause. First and Second Cumulative Preferred; Cumulative Voting.

From the Charter of the National Candy Company.

The holders of the first preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the corporation yearly dividends at the rate of seven per cent. (7%) per annum, and no more, payable semi-annually on the dates to be fixed by the by-laws. The dividends on the first preferred stock shall be cumulative and shall be payable before any dividends on the second preferred stock or the common stock shall be paid or set apart, so that if in any year dividends amounting to seven per cent. (7%) shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the second preferred or common stock. Whenever all cumulative dividends on the first preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued semi-annual installment for the current year shall have been declared, and the company shall have paid such declared cumulative dividends for previous years, and such accrued semi-annual installment upon said first preferred stock, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the holders of the second preferred stock shall be entitled to receive when and as declared from the remaining surplus or net profits of the corporation after the payment of the cumulative dividends and accrued semi-annual installment upon the first preferred stock as aforesaid yearly dividends at the rate of seven per cent. (7%) per annum and no more, payable semi-annually on dates to be fixed by the by-laws. The dividends on the said second preferred stock shall also be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart, so that if in any year dividends amounting to seven per cent. (7%) shall not have been paid on said second preferred stock, the deficiency shall be payable before any dividend shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock, both first preferred and second preferred, for all previous years shall have been declared and shall have become payable, and the accrued semi-annual installments for all preferred stock for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years upon both said first preferred and second preferred stock in the order aforesaid, and also such accrued semi-annual installments thereon as aforesaid, or shall have set aside from its surplus or net profits a sum sufficient for the payments thereof as aforesaid, the board of directors may declare dividends on the common stock payable then or thereafter out of any remaining surplus or net profits.

Each share of first preferred, second preferred and common stock shall have the same voting power in all corporate affairs, and each share thereof shall be entitled to one vote in such affairs with the power of cumulative voting as conferred by law, and from time to time the first preferred, second preferred, common stock, or any one or more of said classes of stock may be increased according to law, and may be issued in such amounts and proportions and for such considerations as shall be determined by the board of directors and permitted by law. In the event of any liquidation, the holders of the first preferred stock shall share equally, and be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the second preferred stock, and after the payment in full of all unpaid dividends accrued upon and the par value of the first preferred stock, then the holders of the second preferred stock shall share equally and be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock, and after the payment in the order aforesaid to the holders of all the preferred stock of its par value and of all the unpaid declared or accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock equally and pro rata according to their respective shares.

Form 24. Stock Clause. First and Second Preferred, Cumulative; Participating Preferred.

From the Charter of the Engineering Contract Company.

The preferred stock shall be entitled, out of any and all surplus net profits, whenever ascertained, to cumulative dividends at the rate of eight per cent. per annum in each and every year hereafter, in preference and priority to any payment of any dividends on the common stock for such year. The common stock shall be subject to the prior rights of holders of the preferred stock as herein declared. If after providing for the payment of full dividends for any year on the preferred stock, and for any balance that may remain due on the cumulative dividends on such preferred stock for preceding years, there shall remain any surplus net profits, any and all such surplus net profits not in the opinion of the board of directors required to provide for the maintenance, improvement, enlargement and operation of the property and business of the corporation, or for the payment of its liabilities, shall be applicable to dividends upon the common stock for such year, to the extent of, but not exceeding eight per cent. upon the said common stock, when and as from time to time the same shall be declared by the board of directors; which dividends upon the common stock shall not be cumulative, but shall only be paid if earned. The remainder of any such surplus net profits shall then be applicable to the payment of further dividends equally per share upon both preferred and common stock. The board of directors may declare, and out of such surplus net profits may pay, annual dividends upon the common stock of the said corporation to the extent of, but not exceeding, eight per cent. upon such common stock, but no such annual dividends shall be declared or paid until the cumulative dividends shall have been paid in full upon the preferred stock for such year, and for all preceding years; and after the payment of such cumulative dividends upon the preferred stock, and such dividends upon the common stock, to the amount of, but not exceeding eight per cent., out of any further surplus net profits, the board of directors may declare and pay dividends equally per share upon the preferred and common stock. In case of the dissolution or termination of the corporation, the preferred stock and the holders thereof shall also be entitled to preference in the distribution of the assets and property of the corporation, and any and all such assets and property in case of such dissolution, shall be applied first to the payment in full of the principal of the said preferred capital stock at par with all cumulative dividends thereon in preference and priority to any payment upon the common stock, and second, to the payment of the principal of the common stock at par; and any balance remaining shall be divided equally per share among the holders of preferred and common stock.

Form 25. Stock Clause. Non-Cumulative Dividends, Payable Half-Yearly.

From the Charter of the American Tobacco Company.

Said preferred stock shall entitle the holders to receive in each year a dividend of eight per cent., payable half-yearly, before any dividend shall be set apart or paid on such general or common stock, and if the net profits in any year shall not be sufficient to pay a dividend of eight per cent. on said preferred stock, then such dividend shall be paid thereon as the net profits of the year will suffice to pay. The holders of the preferred stock shall have a preference on the assets of the company, but the dividends thereon are not to be cumulative, but shall be payable each year only out of profits of that year, and such preferred stock and the certificates therefor may be issued by the board of directors by resolution.

Form 26. Stock Clause. Non-Cumulative Dividends, Payable Quarterly, Half-Yearly, or Yearly as Provided by Directors.

From the Charter of the Continental Tobacco Company.

The holders of said preferred stock shall be entitled to receive in each year, out of the accumulated profits of the corporation, in excess of such sum, if any, as shall have been fixed and reserved as a working capital, a non-cumulative dividend of seven per cent., payable quarterly, half-yearly or yearly, as the directors may from time to time determine, before any dividend shall be set apart or paid on the general or common stock of the corporation. If the accumulated profits in excess of the sum fixed and reserved as a working capital shall not be sufficient to pay, in any year, a dividend of seven per cent. on said preferred stock, then such dividend shall be paid thereon as such excess of accumulated profits will suffice to pay; but the dividends thereon shall not be cumulative, but shall be payable for each year only out of the accumulated profits in excess of the sum fixed and reserved as a working capital, and not out of accumulated profits of any subsequent year or years.

Upon the dissolution of the corporation, or upon final distribution of its assets, and after the payment of its debts, the preferred stock shall be redeemed at par if the assets of its corporation, including surplus and accumulated profits, are sufficient. If the assets are not sufficient to redeem said stock at par, then all said assets, or their proceeds, shall be distributed ratably among the holders of such preferred stock. If the assets are more than sufficient to redeem the preferred stock at par, all remaining after such redemption shall be divided ratably among the holders of the general or common stock of the corporation.

Form 27. Stock Clause. First and Second Preferences on Same Stock.

CHICAGO & NORTHWESTERN.—The preferred stock is entitled, as provided in the articles of agreement and consolidation, made between the Galena & Chicago Union R. R. Co., and Chicago & Northwestern R. Co., of date June 2, 1864, to preference to the aggregate extent of ten per cent. in the dividends which may be declared in any year, out of the net earnings of such year, in the manner following: First, to a preference of seven per cent., and after dividends of seven per cent. on the common stock; then, secondly, to a further preference of three per cent. After a further dividend of three per cent. on the common stock both classes of stock shall be entitled to equal rates per share in any further dividends.

Form 28. Stock Clause. Limitation of Common Stock Dividend.

Chicago, St. Paul, Minneapolis & Omaha R. R.—"This stock is entitled to a preferred dividend to the extent of seven per cent. per annum prior to the common stock of the company, to be declared and paid from the net earnings of any year, but shall not be cumulative. No greater dividend shall ever be paid in any year to holders of common stock than is paid on this preferred stock."

Form 29. Stock Clause. Definition in Certificate of Net Earnings.

Evansville and Terre Haute.—(Indorsement.) "For the purpose of paying dividends upon the within [preferred] stock the net earnings of the company shall be ascertained as follows:

"The gross annual income shall include, in addition to income from traffic, net income from car mileage, net switching receipts, rents from all sources, includng tracks, yards, terminals, dwellings, etc., interest, dividends and profits from whatever source derived, and all other items of income of the company.

"From this amount shall be deducted taxes, operating expenses, interest on funded debt and other indebtedness, losses through bad debts incurred in the ordinary business of the company or of companies owned or controlled by it, rentals of leased roads and other rentals, betterments chargeable against income, and such part of the interest on the $2,500,000 of outstanding bonds of the Evansville and Indianapolis Railroad Company and Terre Haute and Southeastern Railroad Company, or of the bonds into which they may be refunded, payable within the fiscal year, as defined within, as the net earnings of these companies for such year may not suffice to pay. All charges against income for account of betterments and permanent improvements shall consist only of such items as rebuilding bridges, relaying track, rebuilding structures or reconstructing equipment in a substantial manner and to a sufficient extent to keep said railroads in good and efficient condition; but all new equipment, extensions of plant or extensive enlargements of buildings or terminals shall, to the extent of the increased value beyond the then existing facilities, be charged to construction. After making the deductions from gross income herein named, the resulting balance shall be considered the net earnings of the company, applicable to dividends."

Form 30. Stock Clause. Preferred Stock, Non-Voting Except when Dividends are Delinquent.

From the Charter of the Royal Baking Powder Company.

So long as the dividends reserved on said preferred stock shall be paid as and when the same are by this instrument provided to be paid, the holders of the preferred stock shall have no voting power on any question. In the event, however, that any dividend due on the preferred stock shall not be paid when payable hereunder and shall remain so unpaid for a period of four months, then a special meeting of the stockholders of the company shall be called at the request of any preferred stockholder or stockholders owning preferred stock of the par value of fifty thousand dollars ($50,000), which meeting shall be convened on ten days' notice by mailing a copy of such notice to each preferred stockholder of record at the time such notice is mailed to his address as the same appears at the time upon the preferred stock ledger hereinbelow mentioned, and at such meeting, if said dividend still remain unpaid, the holders of a majority of the preferred stock, present or represented at said meeting, shall be entitled to elect a new board of directors of the company, and the voting power theretofore vested exclusively in the common stock of the company shall for the time being wholly cease.

The election of the new board of directors in the manner hereinabove specified shall terminate the term of office of each member of the existing board of directors elected by the common stockholders. Thereafter and until all arrearages of dividends shall have been paid, or accumulated as hereinafter provided upon the preferred stock, the voting power theretofore vested exclusively in the common stock shall vest and remain in the holders of the preferred stock. One month after the payment of all defaulted dividends upon the preferred stock or the accumulation of net earnings equal to said defaulted dividends, the voting power then vested exclusively in the preferred stock shall cease, and such exclusive voting power shall be restored to the holders of the common stock, and a new board of directors may be elected by such exclusive vote of the common stock, at a meeting duly called and held as above provided, concerning any meeting following a default in the payment of dividends on the preferred stock, save only that notice thereof shall be given alone to the holders of the common stock, and, such meeting being held and such new board being elected, the term of office of said director elected by the vote of the preferred stock shall at once expire.

At the end of each fiscal year the company shall cause a full audit of its accounts to be made by some certified public accountant, which audit shall at all times be open to the inspection of all holders of the preferred stock of the company.

During any period of time that the corporation shall be managed by a board of directors elected by the preferred stockholders, the books of account showing the business and earnings of the said corporation shall be open at all reasonable times, not oftener than once in three months, to the inspection and examination of the owners of a majority of the common stock.

The by-laws of the corporation shall contain provisions consistent with the foregoing, and the portion of said by-laws so providing shall not be subject to amendment or change, save by the assent in writing of at least two-thirds of all the outstanding shares of the preferred stock and also by the vote of at least two-thirds of all outstanding shares of the common stock of the company.

A preferred stock ledger shall be kept by the company at its principal office, setting forth the names and post office addresses of the preferred stockholders respectively, and the number of shares of preferred stock held by each, and each transfer of preferred stock of the company, and like information as to each transferee shall from time to time be entered upon such ledger, which shall be at all reasonable times open to the inspection of any owner of said preferred stock.

No mortgage shall be created or assumed by the company, nor shall any class of its capital stock now or hereafter existing other than its common stock, be increased, nor shall said company be merged into or consolidated with any other company, unless (in the event the company at the time be managed by a board of directors elected by the holders of the common stock) there shall be first obtained the consent in writing of the holders of seventy-five per cent. of the preferred stock outstanding at the time, or unless (in the event that at such time the company shall be managed by a board of directors elected by the holders of the preferred stock) the like consent shall be first obtained of the holders of seventy-five per cent. of the common stock.

The foregoing provisions shall be construed as limitations upon the voting power of the holders of the capital stock of the company (no voting power whatever on any question being vested in the holders of the preferred stock except as hereinabove provided), any future law of the state of New Jersey in anywise to the contrary notwithstanding, said provisions having been agreed upon between the parties to these presents as constituting conditions precedent to the organization of said company.

PURPOSES OF INCORPORATION.

The proper statement of a purpose, or object, is a more important matter than is commonly supposed, even among lawyers. There are two methods of expressing the purpose, one the general expression of a specific purpose with the addition of an expression giving general powers, such as, "This corporation is formed for manufacturing boots and shoes and the pursuance of other lawful purposes," and the detailed method, examples of which are found herein following this introduction. The better American and English opinions favor a detailed statement of the purposes and powers of corporations. Palmer's Company Law (English), says, "A very concise statement of objects may, by implication, as the lawyer is aware, cover a great deal, but a memorandum of association is a popular document intended not merely for lawyers, but for the guidance of shareholders, directors and of the general public, and, accordingly, it is not expedient to rely too much on implication. Experience shows that it is better to be explicit and thus to preclude as far as practicable the doubts and difficulties which inevitably arise on the construction of a very concise statement of objects. These clauses may err by excess of detail; but over-elaboration is better than over-conciseness." Mr. James B. Dill, a lawyer who had wide experience with large corporations, says of the section in which the objects of incorporation are defined (Dill on New Jersey Corporations), "This being the important part of the certificate of incorporation, great care should be taken that the objects and purposes of the company are stated in the fullest and clearest manner possible, because the company can not undertake any business not authorized by its charter, and not even the fullest sanction given by the shareholders will make valid an act which is outside the powers of the company. Directors undertaking any such business may become personally liable for loss, and great inconvenience follows from companies having too limited powers." He questions how much in detail the objects should be expressed and says: "The balance of disadvantage decidedly attaches to too narrowly defined objects. It is easier to compress, so to speak, the business of a company within the limits of large objects and broad powers than to develop business by extension in the face of narrowly defined objects. It is better to give latitude to the objects and powers as contained in the certificate of incorporation, and to limit the powers of directors by the by-laws, than to run the risk of the subsequent insertion in the by-laws or in the minutes of the board of directors of a provision intended to meet some pressing requirements of the business, which provision may be found absolutely worthless because of variation from the terms of the certificate of incorporation. It is customary to insert general words, such as, 'In general, to carry on any business, whether manufacturing or otherwise.' But it must be understood that the courts limit such words to operations of a nature similar to the business previously mentioned, and will not include any wholly fresh business."

Under the English common law, corporations created by royal charter had power to do anything that any human being might do, except in so far as the corporations were restricted by direct prohibition. But in England and America it is now held that corporations created by legislative bodies, either by special acts, when legal, or by general laws, have only such powers as are conferred on them, expressly and impliedly, by the statutes or articles of incorporation. The purposes, then, must be within the general enabling act and lawyers should take care that all objects expressed are authorized by the statutes of the state under whose laws they are forming the corporations. All purposes that are not in the articles of incorporation and that can not be implied from their expressions are beyond the powers (*ultra vires*) of the corporation and can not be followed legally even if all the stockholders consent to it, or if one stockholder objects when the corporation is doing business unmolested under a statute and articles in which these particular powers are not included. There are some general powers, however, that are implied, as belonging to all corporations, such as the power to sue and be sued, to have and use a distinctive seal, etc., such powers being usually expressed in the general enabling act so that it is not always in the articles of incorporation. It is scarcely necessary to remind lawyers that expressions in the by-laws can not in any way enlarge the powers of a corporation.

According to the doctrine of *ejusdem generis* it is held that where power to do all or any of certain specific things is followed by some more general expression giving further power, such general expression takes color from the specific expression and is held to refer to things of the same kind. In statutory construction, however, it has been held that, as it may appear that the specific expressions were not introduced to give color to the general expression, and that the general expression was intended clearly to broaden the scope of power conferred by the statute without regard to the specific expressions, therefore the general expression should govern in order to carry out the purpose of the statutes. The lawyer incorporating under a law whose construction admits these general expressions would better take advantage of them.

In writing a comprehensive and explicit statement of purposes and powers, those combined with one another should be joined by the conjunctive "and" and not by the disjunctive "or." Although the use of "or" is so common that clauses in articles containing it have usually been interpreted as including the powers so joined, it is clearly a disjunctive expression which, in itself, signifies that the powers so connected are separate and that the statutes so mentioning the powers give the incorporators their choice as to the powers they will use, but not all of the powers. Also, expressions should be so framed that they do not run counter to the legal maxim that the expression of one thing excludes other things (*expressio unius est exclusio alterius*). An illustration is an expression which gives specific power to borrow money up to a certain amount. This acts as a limited expression rather than as a comprehensive one, for it probably would be construed as forbidding the borrowing of an amount larger than that specified. Limitations usually are considered to be cured by a general clause, added to the purpose clauses, which declares that express mention of certain purposes and powers shall not be held to exclude by inference the purposes and powers that might be implied without such express mention.

The articles of association of a corporation which is to conduct its business or part of its business in a foreign state or states, in which it will file copies of its articles, should state not only the specific purposes and those related, but they should state also *in extenso* the general powers of the corporation. For while a corporation which enters a foreign state to do business may have in its domicil many powers which it rightfully exercises by implication, persons dealing with the corporation in the foreign state are not chargeable with a knowledge of the laws of the state where the corporation was formed. Such persons are, however, chargeable with notice of all matters contained in the articles of incorporation which are filed with the proper officer of the foreign state.

The following purpose clauses are purely suggestive. They would be useful in all the liberal states, but in many states, where the purpose powers are limited, they would have to be curtailed to come within the provisions of the laws. Yet, in some instances, combinations of those given would be possible while keeping within the law. It should be remembered that, if one incorporates in a "liberal" state with the intention of doing business as a foreign corporation in a conservative state, it may not be possible to have any broader powers than the law of the conservative state provides, as in Indiana, for instance, where a foreign corporation on entering the state must choose under which of the purpose provisions specified by the Indiana law it will do business. That puts foreign corporations on an equality with domestic corporations in this respect.

Where the laws of a state specify the express words to be used in a purpose clause, giving corporations the choice, sometimes, between several expressions, as given in the statutes, the corporation may have no latitude whatever, other than the one clause, or a possible alternative or two already expressed. But in a few instances these same statutes also provide for a further general description of the business and advantage may be taken of this to elaborate the purposes in a way by including the general branches of the business to be pursued. The real effectiveness of this device depends on decisions in the various jurisdictions, but where there are no decisions in point, one may as well use this plan, for it can do no particular harm and may do good. The tendency in almost all states is to liberalize the corporation laws so as to permit of a proper and complete expression of the purposes. When a client wishes to incorporate, the lawyer should invite and take notes of a recital of the purposes of the corporation; then consult paragraphs such as those included here, form as comprehensive and complete a paragraph as possible, including the purposes, consult the laws of the state under which the company is to be incorporated and if the purpose paragraph is not allowed in its entirety, make it as complete as the law will permit. General expressions of inclusiveness have not been appended to all the paragraphs herein, but some general paragraphs are given at the end of those applying to specific businesses and can easily be added.

PURPOSE CLAUSES.

Form 31. Abattoir.

To buy, sell and otherwise deal in cattle and other food animals; to carry on the business of slaughtering cattle, pigs, sheep and other animals for food purposes; to pack, preserve, can and otherwise prepare and handle meats, and meat products and derivatives, and to sell meat and meat products at wholesale and retail; to manufacture, buy, sell and deal in meat preservatives and all the chemicals necessary and useful thereto, and wood, tin, glass, cloth and other containers and cans used in packing and preserving, and the materials thereof; to produce, cure, prepare, finish, buy, sell and deal in hides, skins, leather, wool, hair, oil, tallow, lard, oleomargarine, fat, horn, glue, soap, meat extracts, bones and bone products, intestines and intestinal products, offal, fertilizer and other products and by-products of the business of slaughtering; to act as commission merchants, consignees, agents, and principals in dealing in any of the foregoing, and in general to conduct in connection with the foregoing any other businesses necessary or useful or both, to any branch of the business specified or implied herein.

Form 32. Abstract of Title.

To acquire, own, make and keep a complete set of books showing titles, present and past, to all land, tracts, pieces and parcels of land and real estate, with all changes and defects therein, situated in .... county, state of ....; to furnish and examine abstracts of title and to make in connection therewith deeds of conveyance, mortgages, leases, and any and all other instruments by which title and possession of real estate and personal property are conveyed and transferred, and to do all and singular the acts and things necessary and useful to the making, completing, and perfecting of titles and abstracts of title to real estate and exhibiting the condition of titles, liens, incumbrances and anything else for which abstracts of title are made and used.

Form 33. Accountants, Systemizers, Efficiency Experts, Etc.

To do a general bookkeeping, auditing and accounting business, in any and all of their branches; to buy, sell and otherwise acquire, dispose of and deal in books of account and bookkeeping supplies and stationery; to open, take charge of, inspect, examine, correct, compare, improve, balance, audit, and otherwise make, prepare, verify, review and revise books of account; to certify to the results of such inspection, examination, auditing, etc., as above, and to guarantee their correctness; to prepare statistics of businesses and business concerns, of production, distribution and consumption of goods, of services, and the products and components of business generally; to prepare estimates and reports of all the matters affecting business and to prepare and adapt business systems, and to buy, sell and deal in all books, furniture, and office supplies, of any and all kinds necessary and desirable in establishing office, manufacturing and business systems generally; to estimate, appraise the value properties, and to furnish plans and designs as efficiency experts for constructing, enlarging, extending, repairing, completing, wrecking, removing and otherwise creating and altering business plants and machinery, and to engage in architecture, engineering, contracting, and any other allied or constituent businesses necessary or desirable in bringing about efficient and accurate results; to deal in the materials and appliances used in each and all such businesses; to do any and all things necessary, proper and desirable in connection therewith as principal and agent and otherwise in any part of the world, to the same extent and as fully as a natural person might do.

Form 34. Advertising.

To advertise and to carry on a general advertising and publicity business, both as principal and agent, in all its forms and branches; to do a general and periodical publishing business and a book manufacturing and bookselling business; to solicit, contract for and give publicity to advertising of all kinds and to develop and extend the business interests of individuals, firms, corporations and individual or associated interests of all kinds whatsoever; to buy, sell, acquire, dispose of, import and export, and to manufacture, construct, erect, place and distribute advertising devices of any and all kinds, including advertising novelties, fancy articles, sign boards, bill boards, kites, carriages, electricity and electric devices, megaphones and tickets and programs; to buy, construct, lease and otherwise acquire for use sign boards, bill boards, fences, buildings and other structures for advertising purposes; to do a general bill-posting, sign-tacking, circularizing, sample-placing and distributing business of every kind pertaining to any and all kinds of advertising; to carry on the business of printers, stationers, designers, engravers, binders, office fitters, sellers of newspapers, magazines, periodicals and publications of all kinds to deal in fancy goods, toys, merchandise and in any other articles and things of a character similar and analogous to the foregoing, any or all, and connected therewith in any way, and in general to do any and all things necessary and useful to carry on this kind of business and to do all things an individual might do.

Form 35. Agency Company.

To act as agent or representative of individuals, firms, corporations and associations, and to deal in their products and to develop, extend and improve their business interests.

Form 36. Agricultural Implements.

To carry on the business of manufacturers of agricultural machinery, tools and implements of all kinds, and dealers in them by domestic, import and export trade; to manufacture, buy, sell, import, export, and otherwise acquire and dispose of harvesters, binders, reapers, mowers, rakes, harrows, cultivators, plows, headers and shredders, cutters, drillers, seeders, threshers, forks, racks. and all other agricultural machinery, implements, devices and tools and the parts and material thereof, and also binder twine, wire and other devices for handling agricultural products, and any other articles and things necessary and useful to agriculture and the foregoing objects, severally and conjunctively.

Form 37. Ammunition.

To manufacture, buy, sell, import, export, and otherwise acquire, dispose of and deal in and to transport gunpowder, dynamite, nitroglycerine and other explosives of all kinds, and the chemicals, apparatus, and carriers necessary and useful to accomplish these purposes; to construct and erect mills and other places for manufacturing, storing and dealing in said articles, and to make kegs and other containers, and to make and deal in, as above, shot, bullets, caps, cartridges, shells, and all other kinds of explosives and projectiles, together with the materials entering into them; to manufacture, buy, sell, import, export and otherwise acquire, dispose of and deal in guns, revolvers, pistols, cannon and firearms of every description; to own, hold, lease, acquire, sell and dispose of, patents, formulae, secret processes and trade marks and trade names, and to conduct any business auxiliary, necessary or useful, or all, to any of the objects expressed and implied herein.

Form 38. Architects.

To conduct, carry on and manage the business of architects, designers and engineers in all their different branches; to prepare and furnish plans, designs, drawings, specifications, estimates, costs and all other items of knowledge necessary for the preparation for and the erection, alteration and repair of buildings and structures of all kinds; to supervise, inspect and certify such erections, alterations and repairs; to develop real estate and acquire by purchase or otherwise, and to own, hold, buy, sell, convey, lease, mortgage, incumber, acquire, dispose of and deal in real estate and other property, personal and mixed; to erect and construct houses, buildings and works of every description, and generally to do all things necessary and useful to the promotion of the objects herein expressed and implied.

Form 39. Automobiles and Motor Vehicles.

To manufacture, buy, sell, import, export and otherwise acquire, dispose of and deal in automobiles, motorcycles, launches, aeroplanes and vehicles of all kinds propelled by mechanical power, for use on land, water and in air; to manufacture, buy, sell and otherwise acquire, dispose of, and deal in any and all parts of such vehicles, and any and all kinds of engines and parts of engines, motors, devices and appliances, for the generation, manufacture and use of steam, electricity, gas, compressed air, and other forms of power and power production and all things incident to and used in connection therewith; to acquire land and buildings for the business described, and do all things a human being might do that are necessary, useful and proper to the conduct of the business.

Form 40. Bakery.

To carry on the business of bakers, confectioners, delicatessen dealers, ice cream, soda water and soft drinks dispensers, restauranteurs, caterers and dealers in fruit and edibles in all their branches; to manufacture, make, buy, sell, import, export and otherwise acquire, dispose of and deal in biscuits, bread, crackers, cakes, pastry, confectionery, ice cream and frozen products, fruit juices, extracts, delicatessen, sweetmeats and other food products, and the ingredients, apparatus and machinery used therefor; to serve luncheons and meals, in or out of the usual place or places of business; to cater and take entire charge of the services of luncheons, meals, dinners, and the providing of other refreshments and entertainments for private persons, societies and organizations of any and every kind; to furnish music and amusements and to make, contract for and furnish any and all things necessary for such entertainments and the service of refreshments; to make, manufacture, buy, sell and otherwise deal in, as above, baking powders, and all chemicals and ingredients used in the making of baking powders, yeasts, cream of tartar, and all other articles and things that pertain to the foregoing; to cut, put up, produce, manufacture and deal in ice and to buy, sell and deal in the chemicals, machinery and properties necessary and useful for producing, housing and distributing ice; to do and transact all lawful business, incidental to any and all of the foregoing objects and to conduct any other business and businesses which will promote any and all of these objects.

Form 41. Boots and Shoes.

To manufacture, buy, sell, import, export, and otherwise deal in boots, shoes, slippers, sandals, leather and leather goods, rubber and rubber goods, cloth and cloth goods, footwear of any and all kinds and materials, blacking, varnish, enameling, preservatives, laces, buttons, buckles, fastenings, stretchers, jacks, and all other accessories; also to repair all kinds of footwear and to deal in all kinds of machinery for manufacturing and repairing footwear, to hold patents, and to do all things necessary and useful to the promoting of the objects hereof.

Form 42. Brewery.

To brew, manufacture, buy, sell, import, export and generally deal in beer, porter, ale and all other kinds of malt liquors and liquors of all kinds; to manufacture, buy, sell and deal in malt, sugars and molasses of all kinds, and all the products of cane and sugar vegetables and chemicals, materials and products; to manufacture, buy, sell and deal in ice; to hold real estate and erect breweries, ice-houses, vats, containers and all properties and apparatus for brewing, distilling, malting, ice making, etc., as above, in all their branches, and to own and control stables, horses, motors, delivery and hauling vehicles of all kinds and do a delivery and hauling business, together with any and all business incidental to the purposes herein named or implied.

Form 43. Building Contractors.

To make, enter into, perform and carry out contracts for constructing, altering, decorating, maintaining, furnishing, fitting up and improving buildings of every sort and kind; to advance money to and enter into contracts and arrangements of all kinds with builders, property owners and others; to carry on in all their respective branches the business of builders, contractors, decorators, dealers in stone, brick, timber, hardware and other building materials or requisites; to purchase for investment or resale, and to sell houses, lands, real property of all kinds and any interest therein, and generally to deal in, sell, lease, exchange or otherwise deal in lands, buildings and any other property, whether real or personal.

Form 44. Canning.

To own, operate, run and manage a canning factory, and to acquire, own, hold and dispose of real estate, buildings, structures and all the necessary machinery and appliances for running and operating a canning factory for the purpose of canning and preserving fruit, vegetables, and edibles of all kinds, including apples, pears, cherries, plums, corn, peas, beans, tomatoes, pumpkins, mushrooms, and to make and pack jams, marmalades, jellies, pickles, mince meat, catsups, and any and all products whatsoever of fruits, vegetables and edibles; and to own and hold by lease or otherwise farming lands from which to produce and raise such edibles, vegetables and fruits; and to furnish and supply farmers, gardeners, trucksters and such workmen with seed, sprouts, plants, spawn, roots of vegetables and edibles with which to grow and produce such vegetables and edibles to be sold, canned and preserved, and to contract with such farmers and growers for their products; to deal in canned goods of its own production and to buy and sell all canned goods generally and to sell and dispose of by-products made and resulting in the operation of such a canning factory, and to manufacture, buy, sell and deal in cans and containers of all kinds and do all things necessary, useful and proper in running and operating such a factory.

Form 45. Carriages and Wagons.

To manufacture, buy, sell, import, export and deal in carriages, buggies, wagons, coaches, coupes, carts, omnibusses, trucks, sleighs, automobiles, motor cars and vehicles of all kinds, with the materials and parts used in them; to do a general repair business and to let for hire any and all vehicles and generally conduct any businesses incidental and auxiliary or having to do with vehicles for the conveyance of persons and property.

Form 46. Car Builders.

To manufacture, buy, sell, lease, export, import, and otherwise acquire and dispose of, equip, alter, repair, maintain, operate, and otherwise handle and treat steam, electric, cable and other cars for all transportation, storage and other purposes and also all appliances, devices, apparatus, accessories, machinery, equipment used in connection therewith and in the stations, terminals and equipment thereof, and on the tracks of railway, steam, electric or other lines.

Form 47. Cash Registers, Office Appliances.

To manufacture, buy, sell and otherwise acquire, dispose of and deal in cash registers, and check, slip tape and autographic registers and adding, calculating, registering, weighing machines, and mechanical office and business assistants and appliances of all kinds.

Form 48. Cement.

To manufacture, prepare, buy, sell, import, export and otherwise acquire, dispose of and deal in any and all kinds of cement, lime, brick, plasters, artificial stone and other building materials; to buy, lease, build or otherwise acquire manufactories, plants, buildings, kilns, warehouses, depots, agencies for the manufacture, storage, sale, distribution and transportation of cement and other building products.

Form 49. Cereals.

To buy, sell, store, warehouse, deal in and handle in every manner, wheat, corn, oats, grains and cereals of every description and to grind, mill and convert the same into the various products thereof. To buy, own, lease or otherwise hold, sell and dispose of elevators, mills, granaries, and structures of every nature and kind for the storing, handling, utilization and sale of oats, grains, cereals and agricultural products of every nature and kind. To carry on a milling and manufacturing business and the business of transporting agricultural products of every nature and kind. To manufacture, buy, sell and deal in agricultural machinery and milling machinery and machinery for handling oats, grains, cereals and all agricultural and other products and machinery for converting agricultural products of all kinds into their various products and by-products.

Form 50. Chemicals.

To manufacture, produce, buy, sell, import, export, and otherwise deal in and with chemicals and chemical products, and pharmaceutical and medicinal ingredients and products, drugs and all machinery, apparatus, substances and articles necessary and useful in connection with such business, whether manufacturing, wholesale or retail, any and all; to conduct in connection therewith any business auxiliary to the foregoing or such as are commonly conducted in connection therewith.

Form 51. Cigars and Cigarettes.

To buy, make, import, sell, export and otherwise deal in cigars and cigarettes, cheroots, chewing and smoking tobacco and other tobacco products; to import, export, buy, sell and deal in leaf tobacco and other raw tobacco materials; to grow tobacco, deal in tobacco seed, contract for the growing of tobacco, and dry, treat and prepare tobacco; for all the foregoing purposes to build, buy, lease and otherwise acquire lands, factories, warehouses, dryhouses and any other real estate and buildings necessary and useful to these purposes, and also machinery, tools, implements, appliances and any other personal property necessary and useful to the growing, cultivating, preparing, manufacturing and transporting of tobacco and its products.

Form 52. Coal.

To mine, buy, sell, import, export and deal in all kinds of coal and other mineral products and by-products; to acquire, purchase, lease and develop coal and mineral lands, and mining rights; to engage in business, both wholesale and retail, as producers, and dealers in coal, coal briquets, coke, wood, fuel, oil and other combustibles; to own, control and maintain storage yards and houses, horses and wagons, motors, water craft, cars, and other means of transportation and delivery, and all other real and personal property useful to the business, and to conduct in connection therewith any and all other businesses auxiliary thereto.

Form 53. Coal (New Jersey).

To acquire by purchase, lease or otherwise coal mines, coal lands, coal properties, mineral and mining rights; to develop, mine and operate such mines and property; to buy and sell coal, manufacture, purchase and sell coke and other by-products; to produce and deal in gas, oil and other mineral products; to purchase, build and lease houses, store buildings and other structures, and to construct, maintain and operate all necessary railways and tramroads; to buy and sell merchandise at wholesale and retail, and conduct a general mercantile business; to buy and sell real estate and lay out town sites and sell lots; to construct or otherwise acquire, and to maintain and conduct a hotel or hotels.

To engage in any business connected with the health, comfort or welfare of its employés; to supply, by manufacturing or otherwise, materials for its or their use, and generally to carry on any other manufacturing or trading business, exporting or importing, which can conveniently be carried on in connection with any of the objects herein set forth.

To buy, sell and lease oil and gas properties, construct and maintain pipe lines, and to drill oil and gas wells and develop, operate, lease or sell the same; to furnish, sell and supply both natural and artificial gas; to sell oil, and engage in the business of refining the same, and generally to furnish, sell, supply and dispose of the product of said wells and properties; to acquire water rights and privileges, construct pipe lines and mains, and establish waterworks with all necessary equipment, and to use, furnish, sell and supply water; to construct and establish a plant or plants with all necessary equipment, rights and privileges for the manufacture and production of electricity, and to use, furnish, sell and supply the same; to own, construct and operate street railways by electricity or other motive power, and to hold any and all rights, privileges and franchises incident or necessary thereto; except that the company shall not maintain or operate any railroad or engage in any business hereunder which shall require the exercise of the right of eminent domain within the state of New Jersey.

Form 54. Cold Storage.

To carry on a cold storage business; to refrigerate, preserve in cold storage, import, export and generally deal in all kinds of food products of a perishable nature or otherwise; to manufacture, cut, buy, sell, deal in and deliver ice; to make, deal in and supply in any manner cold air, chemicals, compounds, machinery and apparatus for refrigerating and freezing, and conducting and delivering the same; to construct, buy, acquire, lease, maintain, operate and sell plants, machinery, apparatus, equipment, supplies, patents, inventions and all property, rights, and privileges of any and all kinds useful to the purposes hereof.

Form 55. Commission Men.

To engage in the business of selling goods, wares, products and merchandise as principals or on commission, or both, and to act as general selling agents; to import and export goods, wares, produce and merchandise and particularly to act as agents and brokers for the selling on commission or otherwise of the following classes of property, to wit: (insert here the commission line to be pursued).

Form 56. Construction Engineers.

To carry on the business of contracting and construction in all branches; to build, construct, erect, acquire, equip, repair, maintain, develop, improve, operate, manage, control, take on lease or agreement, sell, lease, let, license to use, use, dispose of houses, buildings, factories, mills, monuments, public or private roads, alleys, walks, areas, railways, tramways, water, gas and electrical or other works, reservoirs, aqueducts, viaducts, tunnels, canals, irrigation ditches, sewers, conduits, subways, bridges, wharves, docks, piers, dikes, and all other public and private works, necessities, conveniences and ornaments.

Form 57. Cotton.

To buy, sell, import, export, plant, raise, gather, gin, and clean cotton; to bale cotton by hand or mechanical process; to build, operate and maintain warehouses, and to do a general warehouse business; to manufacture, buy, sell, export, import, lease, and generally deal in machinery for the ginning, cleaning, baling and compressing of cotton and other fibrous materials; to engage in the business of producing, buying, selling, importing and exporting cotton seed; to carry on the business of buying, selling, importing, exporting, manufacturing, refining, preparing, producing and generally dealing in cotton oil and other oils.

Form 58. Dairy.

To manufacture, buy, sell, import, export and deal in butter, cheese, oleomargarine, butterine and other compositions and fats used as or in place of butter, and dairy products of all kinds; to buy, own, maintain and control farms, barns, buildings and all necessary and useful real estate, and cattle and live stock of all kinds with full equipment for carrying on the dairy business; to produce, buy and acquire milk, buttermilk, koumyss and other milk drinks and products; to sterilize, preserve, condense and certify milk; to conduct laboratories for the analysis of milk and its products, for the cultivation of the bacillus Bulgaricus and other bacilli, and to buy, sell, make and deal in such chemicals, cultures, products, apparatus and fixtures used and produced in dairy laboratories; to acquire, own and deal in horses, delivery wagons, motors and vehicles of any and all kinds for transporting and delivering dairy and other products, and to acquire, construct, maintain and operate refrigerating cars, plants and warehouses, and plants for the manufacture of ice; to sell and dispose of ice, and to do any and all things necessary and useful to the conduct of the dairy business and its auxiliary branches.

Form 59. Department Store.

(John Wanamaker, New York.)

To establish and conduct a general department store in all its branches.

To carry on all or any of the businesses of dry goods merchants, cloth manufacturers, furriers, haberdashers, hosiers, manufacturers, importers, wholesale and retail dealers of and in textile fabrics of all kinds, milliners, dressmakers, mantua-makers, tailors, hatters, clothiers, furnishers, outfitters, glovers, lace manufacturers, feather dressers, boot and shoe makers and dealers, manufacturers and importers of gold and silver ware, and all articles produced therefrom; importers and dealers in paintings, engravings, statuary and works of art, manufacturers, importers and wholesale and retail dealers of and in leather goods, household furniture, carpets, rugs, china and glass ware, crockery, and other household fittings and utensils, ornaments, bric-a-brac, stationery, toys, sporting goods, notions and fancy goods, and dealers, purchasers and sellers of merchandise for personal, household and general use and ornament, and such other general merchandise, manufactured goods, materials, provisions, produce and such other general merchandise as is ordinarily dealt in by a store selling everything pertaining to goods, wares and merchandise for personal, domestic, household or general use.

To carry on the trade or business of coach, carriage, automobile, bicycle, boat, launch, yacht, motor-boat builders in all or any of its branches, and to buy, sell, import, export, manufacture, repair, let on hire and otherwise deal in and with carriages and vehicles of every class and description, however propelled, and in each and all the respective classes of goods, wares, merchandise and articles for transportation last above specified.

To carry on the business of saddlers and harness makers, manufacturers and dealers in all kinds of leather and in all classes and kinds of saddlery, harness and horse equipment and leather goods, and clothing for horses, and other draught animals, and in all articles and things used in connection with horses and other draught animals.

To buy, sell, manufacture, repair, alter and exchange, let on hire, export and deal in all kinds of articles and things which may be required for the purpose of any of the said businesses, or commonly supplied or dealt in by persons engaged in any such businesses, or which may seem capable of being profitably dealt with in connection with any of the said businesses.

To provide and conduct refreshment rooms, reading and writing rooms, resting rooms, dressing rooms, and recreation and amusement facilities.

To provide accommodations by way of telephone, telegraph and mailing facilities and any other offices, conveniences or facilities for the general use and benefit of customers and others.

To import, export, buy, sell, assign, consign, take on consignment lease, manufacture, deal in and deal with goods, wares and merchandise, chattels and effects of all kinds, both at wholesale and retail.

To the extent permitted by the Business Corporation Law of the state of New York, to purchase or otherwise acquire, sell, dispose of, lease and deal in real property of all kinds.

To enter into, make, perform and carry out contracts of every kind which a corporation organized under the Business Corporation Law may lawfully enter into, and for any lawful purpose with any person, firm, association or corporation.

To issue bonds, debentures or obligations of the company from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States, or any foreign country, patents, patent-rights, licenses and privileges, inventions, improvements and processes, trade-marks and trade-names, relating to or useful in connection with any business of the corporation.

To conduct any or all of its business and to do any one or more of the acts and things herein set forth as its purposes outside of the state of New York and in other states, territories and dependencies of the United States and in foreign countries; and the corporation may conduct its said business and do the said acts and things or any of them in any of said states, territories, dependencies or foreign countries, and may have one or more offices out of the state of New York, and may hold, purchase, mortgage or convey real or personal property of every kind within, and, to the extent permitted by local laws, without the state of New York.

Form 60. Distillers.

To carry on the business of manufacturers, distillers and dealers in wines, brandies, spirits and liquors of all kinds; to carry on the general business of distilling and rectifying wines, brandies, whiskies, spirits and liquors of all kinds, and generally to deal in grain, sugar, molasses and all products used in connection with the operation of a distillery; to manufacture, buy, sell, import, export and deal in machinery for the manufacture, distillation and rectification of liquors of every class and description; to build, operate and maintain warehouses, bonded or otherwise, and to do a general warehouse business; to issue, register, guarantee and certify warehouse receipts; to manufacture, buy, sell and deal in ice.

Form 61. Drugs.

To purchase and operate retail and wholesale drug stores; to buy and sell, import, export and deal in, at wholesale and retail, all drugs, medicines, paints, chemicals, oils, dyestuffs, glassware, toilet and fancy articles, fancy goods, druggists' sundries, soaps, perfumeries, liquors, surgical instruments, appliances and apparatus, physicians', surgeons' and hospital supplies, paints, oils, pharmaceutical and general merchandise and all other goods and other articles pertaining to the drug business; to operate soda-water fountains and sell therefrom soda water, hot and cold drinks, ices and ice cream; to buy, sell and deal in cigars, cigarettes, tobacco, candies, toilet articles, liquors and liquids and all other articles incidental to the drug business; to employ registered pharmacists and clerks for the purpose of carrying on the said business; to buy, sell and deal in medicines, patent or otherwise; to fill prescriptions; to lease stores; to buy, sell, exchange, mortgage, hire, let, lease or otherwise acquire and dispose of property for the purpose of operating drug stores, and to do all acts and things in connection with such business.

Form 62. Dry Goods.

To manufacture, buy, sell, import, export and deal in goods, wares and merchandise, dry goods, notions, silks, linens, cotton goods, fabrics of all kinds, laces, embroideries, ribbons, neckwear, gloves, leather goods, curtains, household fittings, clothing, fancy articles, for use and decoration and generally all kinds and classes of dry goods and goods usually handled in connection therewith.

Form 63. Electric Lighting, Heating and Power.

To manufacture, generate, store, transmit and distribute electric current for light, heat and power; to manufacture, buy, sell, import, export, lease or otherwise acquire and generally deal in machinery and devices for the manufacture, generation, storage, transmission and distribution of electric current for light, heat and power purposes; to erect, buy, sell, lease or otherwise acquire, operate and maintain electric lighting, heating and power plants; to manufacture, buy, sell, lease or otherwise acquire, import, export and generally deal in electric machinery and apparatus of all kinds; to build, buy, sell, lease or otherwise acquire, maintain and operate underground subways, conduits, poles, string wires above, upon or under the streets, alleys and territories of counties, townships, cities, towns and villages, whether maintained or owned by public or private corporations or individuals.

Form 64. Garage.

To buy, sell, import, export, deal in, operate, let for hire, store, repair, clean and generally attend to and care for automobiles, motorcycles, trucks and motor vehicles of all kinds whatsoever; to acquire, build, maintain and operate garages, storage houses and buildings for the foregoing purposes, and to buy, sell, export, import and deal in parts of vehicles, power machinery and all materials, supplies, merchandise and wares necessary and useful to the operation, repair and equipment of motor vehicles; to manufacture, acquire and dispose of electrical power, gas and all other kinds of power, and generally to do all things necessary and useful to accomplish the powers herein expressed and implied and that are auxiliary thereto.

Form 65. Grocery.

To do a general grocery business, handling foodstuffs, kitchen, dining-room and nursery utensils and supplies of all kinds; to manufacture, grow, buy, sell, import, export and deal in canned and preserved foods of all kinds, fruits, vegetables, meats, beverages, and everything known as or used in or sold with groceries; to run eating establishments, cafes, restaurants, and to serve beverages of all kinds therein; to buy, own, sell, deal in vehicles, horses, motors and other conveyances and the accessories thereof for delivering groceries and goods; to do any and all things necessary and useful to forward the foregoing objects.

Form 66. Hardware.

To carry on the business of jobbers and retailers of hardware of all kinds; to manufacture, buy, sell, import, export and deal in supplies for manufacturers, plumbers, miners, electricians, engineers, blacksmiths, millers, steam and gas fitters and for railways of all kinds and boats and water craft, and for other trades and businesses; to buy, sell, import, export and deal in generally household utensils and furniture, cutlery, sheet iron, tin, round and bar iron, bar and tool steel, roofing, guns, sporting goods, saddles and saddlery, machinery, powder, dynamite and other explosives, lubricating oils and all such goods as are usually handled in hardware stores; to establish and maintain foundries, machine shops, repair shops, tin shops and other shops and factories for the construction and repair of hardware and other articles.

Form 67. Hotel Company.

To build, erect, construct, lease or otherwise acquire, manage, occupy, maintain and operate buildings for hotel purposes, dwelling houses, apartment houses, storerooms, office buildings and other structures; to buy, own, operate, lease and occupy lands, buildings for hotels, apartment houses, dwelling houses, office buildings and business structures of all kinds for the accommodation of the public and of individuals; to keep, manage, conduct and operate hotels, apartment houses, dwelling houses, diningrooms, restaurants, lunch and tea rooms, assembly halls, cigar and tobacco shops, barber shops, billiard halls, cafes, florists' shops, and bars for the accommodation of the public and of individuals.

Form 68. Ice.

To cut, manufacture, buy, store, sell and distribute ice, and to manufacture, buy, import, export, sell and deal in machinery, tools and devices, vehicles, chemicals and chemical compounds for cutting, making, preserving and distributing ice; to erect, buy, lease and otherwise acquire land and buildings for manufacturing and storing ice and for housing vehicles, cars and water craft for delivery; to acquire, hold and dispose of riparian rights.

Form 69. Investment Brokers.

To buy, sell and otherwise acquire, dispose of and deal in government, municipal, corporation, association and individual bonds, mortgages and debentures of all kinds; also in stocks and choses in action of all kinds, in trust receipts, receivers' certificates, commercial paper and securities and evidences of indebtedness of all kinds of social, business and governmental organizations and of individual persons; to do any and all things necessary and useful to forward the purposes herein expressed and implied.

Form 70. Lumber.

To manufacture, buy, sell, export, import and otherwise acquire, dispose of and deal in lumber and building materials of all kinds; to buy, lease and otherwise acquire and to sell and otherwise dispose of real and personal properties of all kinds; to raise, produce, buy, sell and deal in trees, timber and all products of which lumber and building materials are made and composed; to build, buy, lease, sell and otherwise acquire, dispose of and deal in saw-mills, lumber yards, dry kilns, dry sheds, boilers, engines, donkey engines, railroad tracks, cars, locomotives, bridges, boats, log loaders, skidders, electric light plants, power houses, machine shops, waterworks, and all buildings, machinery and equipment used in connection with logging operations and the manufacture of lumber and building materials; to do all things necessary and useful in connection with cutting, making, transporting and selling lumber and building materials.

Form 71. Mining.

To prospect for, locate, acquire by discovery, lease, license, option, purchase, franchise, grant, gift, devise or otherwise, hold, possess, enjoy, develop, mine, work, operate and exploit mines, mineral lands and claims, mining rights, metalliferous lands and rights in .... or elsewhere; also to carry on the business in all its various branches of mining for gold, silver, tin, lead, iron, coal and other mine products; to construct, purchase or otherwise acquire, maintain and operate tunnels, sluices, reservoirs and ditches for mining, irrigation and transportation purposes; also to purchase, lease or otherwise acquire lands, mills, mill sites, tunnel sites, buildings, machinery, power-houses, pumping plants, pump machinery, dump rights, ditch rights, flumes, pipes, pipe lines, private railways, private tramways, private roads, easements, franchises and licenses; also to purchase, construct, lease or otherwise acquire, operate and maintain electric lighting and power plants, buildings, machinery, appliances and equipment appertaining thereto; to purchase, construct, lease or otherwise acquire, operate and maintain telegraph and telephone lines for the transmission of messages and sound by electricity; to furnish gas, water, electricity, power, heat and light for mining, milling, agricultural, domestic and other uses and purposes, and to sell, lease or dispose of the same to such persons or corporations, and for such price or prices and on such terms and conditions as may be proper; to develop, sell, store, contract for and generally deal in and dispose of to such persons or corporations, and for such price or prices and on such terms and conditions as may be proper, electrical and other power for the generation, distribution and supply of electricity for mining, heating and power purposes; to purchase, lease or otherwise acquire, construct and maintain plants for the purpose of extracting values from refractory ores; to purchase, treat, refine, extract, reduce, crush, calcine, smelt, concentrate and manipulate all kinds of ores, minerals and metalliferous substances with a view to obtaining therefrom gold, silver, tin, lead, copper, iron and other metals, combination of metals or other valuable substances with a view to preparing the same for market; generally to engage in smelting, reducing, crushing, refining, milling, treating, assaying and selling minerals and ores of all kinds, classes and descriptions; to buy, sell, manufacture and generally deal in machinery, blasting powder and high explosives of every description, fuses, caps, implements, candles and conveniences suitable for use in connection with mining and metallurgical operations; to purchase, lease or otherwise acquire lands for the purpose of erecting thereon office buildings, plants, workshops, dwelling-houses, warehouses, stores, hotels and other buildings in connection with the foregoing purposes.

Form 72. Newspaper.

To engage in business as proprietors, printers, publishers, distributors, sellers of and dealers in newspapers, journals, magazines, pamphlets, books, manuscripts and other works, literary and otherwise; to carry on a bindery; to deal in stationery and paper and materials for carrying print; to carry on the business of job printer and of lithographer, engraver, stereotyper, photographer, photographic printer, and any other business auxiliary to the manufacture, conduct, distribution and sale of newspapers, etc., as above; to act as advertising solicitors and agents; to undertake and do all kinds of business relating to the gathering of news and information of all kinds, and to purchase, acquire, construct, lease, maintain and otherwise deal in land and submarine telegraph systems and telephones and other electrical contrivances for the transmission of news and information; to buy, sell, import, export and otherwise acquire, dispose of and deal in all supplies, materials, machinery and equipment necessary and useful to any and all of the foregoing objects; to buy, sell, construct and otherwise acquire, dispose of and have interest in real estate, buildings, offices, agencies, barns for use for said purposes and to acquire, use and dispose of vehicles, motor carriages, horses and all other means of transporting and distributing the products of the corporation; to do all things necessary and useful to carry out the foregoing objects not inconsistent with the laws of the state of ....

Form 73. Nursery.

To carry on a general nursery business, and in connection therewith to raise, produce, grow, buy, import, export, sell, trade and deal in trees, shrubs, plants, sprouts, vines, seeds, bulbs, roots, fruits and flowers of all kinds; to carry on any and all kinds of agricultural and horticultural operations and to produce, buy, import, export, sell, trade and deal in any and all kinds of products of the soil; to raise, buy, import, export, sell, trade and deal in any and all kinds of live stock; to manufacture, buy, import, export, sell, trade and deal in agricultural, horticultural and garden implements, tools and supplies of all kinds, including manures, fertilizers, cultures, chemicals and whatever may be used to enrich, disinfect and improve the soil and protect plants, trees, and growths of any kinds and the products thereof.

Form 74. Oil and Gas.

To locate, purchase, lease and acquire land with the exclusive right to prospect, drill, mine, bore and sink wells and shafts; to produce, convey and transport oil, petroleum and gas; to carry on the business of storing and prospecting for, mining, producing, refining, manufacturing, storing, piping, transporting, buying and selling petroleum and other oil products and by-products; to buy, sell, furnish and supply the same; to operate, build, construct, pump, operate and maintain oil and gas wells; to build, construct, purchase, maintain and operate warehouses, pumping plants, pipe lines, refineries, factories, mills, workshops, laboratories and dwelling houses for workmen and others; to manufacture, buy, sell, import, export and deal in pumps, drills, fuses, caps, candles, nitroglycerine, dynamite and the necessary machinery, engines, drills and all appliances and conveniences for use in connection with mining and drilling for oil and gas.

Form 75. Paper.

To maintain, conduct and manage the business of manufacturing, producing, purchasing, selling and dealing in any and all kinds of paper and any and all ingredients, products and compounds thereof, and any and all materials that are now or hereafter may be used in, or connected with such manufacture, including the manufacture and production of wood-pulp and any other fibre; and as a part of and incident to such business the mining of iron pyrites, clay, sulphur, coal, agalite, and any fibrous minerals and materials; the purchase, lease or other acquisition and the development of woodlands and the manufacture, sale and disposition of any surplus product of said woodlands; and the production and sale of any surplus or by-products in said business.

Form 76. Plantation.

To plant, grow, cultivate, produce, buy, sell, import, export and otherwise acquire, dispose of and deal in tropical and semi-tropical fruits, nuts, vegetables and products, including citrus fruits, bananas, rubber, cotton, tobacco and sugar cane, and to engage in all the branches of the planting business; to build, buy, own, maintain and operate buildings, depots, cold storage plants, containers, presses, railway lines, engines and cars, boats, ships, vessels, sugar refineries, drying houses and all other buildings, equipment, apparatus and machinery necessary or useful to handling, preparing and transporting products, and to pack, can, refine, dry, prepare, finish, store, ship and market the products; to mine, quarry and otherwise extract and to refine and prepare for market in any form and to transport and market mineral and other products of the soil; to make, buy, sell, import, export and otherwise deal in the derivatives of any and all products named or implied herein; and to do all things necessary or useful to be done in connection therewith and to carry on any other business or businesses which will promote the purposes herein expressed and implied and are in any way auxiliary thereto.

Form 77. Publishers.

To acquire, print, publish, conduct, circulate, sell, distribute, deliver and otherwise deal in and with any magazine, magazines, periodical, periodicals, journal, journals, newspaper, newspapers, pamphlet, pamphlets, book, books and other publications of any and every description whatsoever; and generally to carry on the business of magazine, periodical, journal and newspaper proprietors and the business of general publishers and printers; to undertake and transact all kinds of business relative to gathering and distributing news and information of every kind and description; to carry on the stationery business and any other merchandising business, book making, book manufacturing, book selling, book binding, designing, engraving, lithographing, die casting, stereotpying, electrotyping and the making and printing of illustrations of every kind and character, by any and every process whatsoever; to secure, acquire, hold, own, use and sell copyrights and all rights of a similar nature or description; and to acquire, own, deal in and deal with all materials or articles of any and every kind and description used or useful in connection with any or all of the objects herein expressed, or of a character similar or analogous thereto; also to dramatize fiction and books and procure the dramatization of fiction and books and to produce and be interested in, either or both, plays, acts and sketches.

Form 78. Quarry.

To quarry, mine, cut, saw, finish, sculpture, prepare, set, purchase, acquire, import, export and deal in stone and marble of all kinds; to make, acquire, prepare, import, export, dispose of and deal in building materials of all kinds, and to erect and construct buildings and structures of all kinds, and do a general quarrying, building and constructing business.

Form 79. Railroads.

To build, construct, own and acquire by purchase or lease a railroad of standard gauge, with its right of way and tracks, side tracks, switches, turnouts and sidings from the city of Cleveland in the state of Ohio to the city of Union City in the said state of Ohio and on the state line between the state of Ohio and the state of Indiana, and passing into and through the following named cities, towns and villages in the said state of Ohio, to wit: (here name); and passing through the following named counties in the said state of Ohio, to wit: (here name); and extending from the said state lines at the said city of Union City to the city of Indianapolis, in the said state of Indiana, and passing through the following named cities, towns and villages in the said state of Indiana, to wit: (here name); and passing through the following named counties in the said state of Indiana, to wit: (here name); the entire length of said railroad being about two hundred (200) miles, the same to be operated by steam or other motive power; and to build, construct, manufacture and to acquire by purchase, lease or otherwise the necessary engines, locomotives, cars, coaches and railway carriages and rolling stock of all kinds necessary, sufficient and convenient for the proper and profitable operation of such railroad and sufficient in number and capacity to properly handle and haul the passengers, travelers and the public generally, and to transport and convey, protect and care for all freight and live stock and all other goods, stores and merchandise that may be for shipment and may be shipped over the said railroad; to acquire, own and hold sufficient real estate in the said city of Cleveland and in the said city of Indianapolis and in the said cities, towns, villages and counties between the said terminals sufficient and proper for terminal stations, depots, stations, waiting houses, freight houses, telegraph offices, ticket offices, baggage houses and any and all buildings, structures and edifices of any and every kind, form and description that may be necessary, convenient or proper and that may be conducive and helpful to the proper and profitable management of such railroad; to own and hold sufficient real estate at any or all of said cities for yards for the proper storage of such cars, coaches and railway carriages, and for the proper unloading of such cars, coaches and railway carriages; to acquire and own real estate at any or all of the said cities for the purpose of constructing, building, owning, maintaining and operating shops for the manufacture, making, repairing or otherwise improving such coaches and railway carriages with all machinery, materials, appliances, tools and implements necessary to such manufacture, repair or improvement; to erect, construct, build and make in connection with said railroad and on and along its right of way a general telegraph system with poles, arms, wires, cables, and with all necessary instruments, appliances and implements for the suitable, proper and profitable operation of a telegraph line, to be operated in connection with such railroad and railroad system and for the accommodation of the public generally in the transmission of telegrams and messages.

Form 80. Realty.

To buy, sell, exchange, improve, maintain and generally deal in real properties, improved and unimproved, office buildings, store buildings, dwelling-houses, barns, wharves, water rights and privileges and any rights and interests therein; to build, construct, operate, maintain, lease and sell dwelling-houses, apartment houses, factories and business houses of all kinds and descriptions; to maintain a general real estate agency and broker's business, including the right to manage estates, to act as agent, broker or attorney-in-fact for any person or corporation; to make and obtain loans upon real estate, improved or unimproved, and to supervise, manage and protect such property and loans, and all interests and claims affecting the same; to acquire, buy, hold, sell, hire, lease, mortgage, pledge and otherwise deal in all kinds of property, chattels and chattels real; to have property insured against fire and other casualties; to investigate the credit, financial solvency and sufficiency of borrowers, mortgagors and sureties upon bonds, mortgages and undertakings; to improve, manage, operate, sell, mortgage, lease or otherwise dispose of any property, real or personal, and take mortgages and assignments of mortgages upon the same.

Form 81. Restaurants.

To carry on the business of owning, leasing and operating restaurants, buying and selling cigars and tobacco in every form, the purchase and sale of liquors by wholesale and at retail; conducting and leasing news-stands, and buying and selling books, papers, magazines and other articles in connection therewith; to provide and conduct newspaper rooms, reading and writing rooms, dressing rooms, telephones and other conveniences for the use of customers and others; to grant to other persons or corporations the right or privilege to carry on any kind of business on the premises of the company on such terms as the company shall deem expedient or proper; to conduct and operate and to acquire and to convey by lease or otherwise the right to conduct restaurants upon vessels plying upon any of the rivers or harbors of the United States or upon the deep seas, together with all and every kind of business in connection therewith; to buy, sell, manufacture, repair, alter and exchange, let on hire, export and deal in all kinds of articles and things which may be required for the purpose of any of the said businesses or commonly supplied or dealt in by persons engaged in any such businesses, or which may seem capable of being profitably dealt with in connection with any of the said businesses; to do any or all of the things herein set forth to the same extent as natural persons might or could do, in all of the states and territories of the United States, or in or upon the deep seas.

Form 82. Sanitarium.

To build, purchase, lease, acquire, equip and maintain a sanitarium or sanitariums for the care and treatment of the sick, disabled, infirm, abnormal and all kinds of dependent, defective and delinquent persons; to maintain and conduct dispensaries, pharmacies, hotels, hospitals, dormitories, bath houses, detention rooms, houses, cottages, laboratories, training schools for nurses, and stables; to handle medical, surgical, sanitary supplies of all kinds and food and clothing; to manufacture, buy, import, sell, export and deal in medical, surgical and physical apparatus, instruments, machinery and supplies of all kinds; to employ skilled physicians, nurses and attendants and to do all things necessary and useful to carry on the business, including the running of ambulances, the keeping of vehicles, horses and motors of all kinds.

Form 83. Schools.

To acquire, build, maintain and operate a school or schools for giving to students classical, scientific, technical, professional, business, physical and athletic and special and general education in all lines; to provide and hold lectures, exhibitions, public meetings, classes, conferences, entertainments, contests and all kinds of meetings and devices intended to advance and develop education, either directly or indirectly; to establish and maintain libraries, reading rooms, and to buy, rent and deal in books, pamphlets, printed matter, blank books and stationery and supplies of all kinds; to conduct dormitories, rooming-houses, dining-rooms and other conveniences for the students and faculty.

Form 84. Stationers.

To carry on the business of stationers, printers, lithographers, electrotypers, engravers, die sinkers, envelope manufacturers, bookbinders, book manufacturers; to carry on the business of booksellers, publishers and dealers in the materials used in the manufacture of paper, and dealers in or manufacturers of any other articles or things of a character similar or analogous to the foregoing, or any of them, or connected therewith; to deal in pens, inks, rubber goods, erasers, writing materials of all kinds, office supplies, ornaments, novelties and all things commonly handled in stationery stores.

Form 85. Steel Manufacture.

See purpose clauses in the articles of incorporation of the United States Steel Corporation, reprinted herein.

Form 86. Stock Farm.

To buy, sell, import, export and otherwise acquire and dispose of live stock of all kinds, fine blooded stock, such as horses, cattle, sheep, hogs, poultry, and also dogs and pet and domestic animals and game fowls and animals; to buy, sell, lease and otherwise deal in .lands, farms, buildings, breeding stables, barns and equipment of all kinds; to carry on a breeding business in all branches according to customs in such business; to keep, publish and sell pedigrees and to publish information concerning blooded and other stock and animals, in pamphlet, book and periodical form; to conduct training stables, racing courses, hunting grounds and all other properties necessary and useful to the training and developing of stock and animals of any and all kinds; and to do any and all things necessary and useful to be done in furthering the purposes herein expressed and implied.

Form 87. Telephone.

To build, construct, operate and maintain a telephone exchange with poles, lines and supports, the same to be constructed, operated and maintained in, through, along and over the streets, avenues and alleys generally of the city of ...., state of ...., and to be maintained and operated with such poles, supports, lines, together with instruments, receivers, transmitters and batteries, and with all instruments and appliances, suitable, necessary and convenient for the proper and profitable use of a general telephone exchange and system, for hire, for the use, convenience and accommodation of the citizens, residents, corporations and the public generally of the said city of ....

Form 88. Theater.

To build, buy, own, lease, hire, operate and manage theaters, opera houses, moving picture houses, music halls, exhibition halls and all kinds of amusement places, indoors and outdoors, for public and private entertainment; to provide, engage, employ, contract with actors, singers, musicians, dancers, athletes, variety performers and entertainers and instructors of all kinds, and with owners and dealers in moving pictures, and to produce and present all kinds of shows, exhibitions and amusements; to carry on a restaurant, cafe and refreshment business, including wines, spirituous and malt liquors, mineral waters and other drinks, cigars, cigarettes, tobacco in all forms, candies and novelties; to acquire copyrights, rights of representation, licenses and privileges of any sort to further the objects of the company, and to employ persons to write, compose or invent plays, acts, pictures, songs, interludes, prologues, epilogues, poetry, music and dances, and to remunerate such persons, and to print or publish, or cause to be printed or published any play, poem, song or works of which the company may have the copyright or the right to publish; and to sell, distribute and deal with any matter so printed as the company may see fit; and to grant licenses or rights in respect of any property of the company to any other person, firm or company.

Form 89. Waterworks.

To construct, buy, hold, lease, acquire, maintain, control, manage and operate, and to sell, lease and dispose of waterworks, and to supply individuals, corporations, associations, factories, municipalities and consumers in general with water and water power for domestic, business, public and other use; to contract, acquire, maintain, use and dispose of underground water-course rights, water rights of all kinds, water systems, dams, conduits, powerhouses, water towers and containers, pipes, mains, standpipes, plugs, reservoirs, buildings, plants, machinery, fixtures and apparatus of every kind necessary and useful to carrying on a complete and independent waterworks business.

GENERAL CLAUSES.

Form 90. To Purchase Property.

Generally to purchase, take on lease or in exchange, hire and otherwise acquire, any real and personal property, and any rights or privileges which the company may think necessary, useful and convenient, all or any, for the purposes of its business.

Form 91. Patents and Trade-Marks.

To register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign or otherwise dispose of, any and all trade-marks, trade-names and distinctive marks, formulae, secret processes, and all inventions, improvements and processes used in connection with or secured under letters patent and grants of the United States or elsewhere; and to use, exercise, develop, grant licenses in respect of or otherwise turn to account any and all such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and with a view to the working and development of the same, to carry on any business, whether mining, manufacturing or otherwise, which the corporation may think calculated, directly or indirectly, to make effective these objects.

Note.—A corporation can not make an original application for a patent. Only natural persons can be inventors, and the patent laws do not authorize an application by any other person than the inventor or discoverer, or his legal representative. See United States Comp. Stat. (1916), § 9430, and Patent Office Rule No. 24. The corporation may, however, take an assignment of a patent for which an application is pending.

Form 92. To Acquire Other Business and Properties.

To acquire the good will, rights, property and assets of all kinds, and to undertake the whole or any part of the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock, bonds, debentures or other securities of this corporation or otherwise.

Form 93. Taking Over a Going Concern.

To acquire and take over as a going concern the business of manufacturing, buying, selling, importing, exporting and dealing in trunks, valises and other packing and carrying devices heretofore conducted under the style or firm name of ...., at ...., in the city of ...., and elsewhere, and any and all of the assets and liabilities of said firm in connection therewith. (Follow with the purpose of the new organization.)

Form 94. To Make Contracts.

To enter into, make, perform and carry out contracts of every sort and kind, with any person, firm, association, corporation, private, public or municipal, or body politic, and with the government of the United States, or any state, territory or colony thereof, or any foreign government.

Form 95. To Purchase, Sell and Deal in Stock and Securities of Other Companies.

To hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by other corporation or corporations, and, while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

Form 96. To Acquire Stock.

To purchase, subscribe for, or otherwise acquire, and to hold the shares, stocks or obligations of any company organized under the laws of this state or any other state, or of any territory or colony of the United States, or of any foreign country, and to sell or exchange the same, and to exercise any or all of the powers of holders of shares, stocks or securities thereof, including the right to vote in respect thereof, such shares, stocks or obligations or the proceeds thereof, among the stockholders of this company.

Form 97. To Guarantee Dividends.

To guarantee dividends on any shares of the capital stock of any corporation in which this corporation has an interest as stockholder, and to indorse, or otherwise guarantee the principal and interest, or either, of any bonds, securities or other evidences of indebtedness created by any corporation in which this corporation has such an interest, provided that authority for any such indorsement of guaranty be first given by resolution adopted by vote of at least two-thirds of the whole board of directors of this corporation.

Form 98. To Lend Money.

To lend and advance money or give credit to such persons and on such terms as may seem expedient, and in particular to customers and others having dealings with the company, and to give guaranties or become security for any such persons.

Form 99. To Borrow Money, Issue Bonds, Etc.

To borrow money, to make and issue promissory notes, bills of exchange, bonds, debentures and obligations and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise.

Note.—Although this power is general by implication, if there is any doubt whatever some such provision as this should be included.

Form 100. To Acquire the Company's Own Stock.

The corporation may use and apply its surplus earnings or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purpose of declaration or payment of dividends unless otherwise determined by a majority of the board of directors, or a majority of the stockholders.

Note.—See Oliver v. Rahway Ice Co., 64 N. N. Eq. 596; Maryland Trust Co. v. National Mechanics Bank, 102 Md. 608, 63 Atl. 70; Berger v. United States Steel Corp., 63 N. J. Eq. 809; Morawetz on Private Corp. (2d ed.), § 112.

Form 101. To Benefit Employés.

To support and subscribe to any charitable or public object, and any institution, society or club which may be for the benefit of the company or its employés, or may be connected with any town or place where the company carries on business; to give pensions, gratuities or charitable aid to any person or persons who may have served the company, or to the wives, children or other relatives of such persons; to make payments toward insurance; and to form and contribute to provident and benefit funds for the benefit of any persons employed by the company.

Form 102. To Conduct Business in Other States.

To have one or more offices, to carry on all or any part of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property and to conduct its business in any state or territory of the United States, and in any foreign country or place, but subject always to the laws thereof.

Note.—If the company is to do business in California, see Pinney v. Nelson, 183 U. S. 144, 46 L. ed. 125.

Form 103. To Donate Lands for Rights of Way and Other Purposes.

In order to promote the interests of the company, and to encourage the settlement, sale, leasing or utilization of the company's lands, to donate any of said lands for rights of way for railroads, tramways, canals or waterways, manufacturing sites, stations, houses, town sites, and such other uses as in the judgment of the board of directors will be conducive to the company's interests; and to make and establish such restrictions and conditions, perpetual or limited, upon and in respect of any of the property of the company at any time by it owned, as the board of directors may deem judicious.

Form 104. To Carry on Other Business.

To carry on any other businesses which may, in the discretion of the directors, seem capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of the company's properties and rights.

Form 105. General Words.

To do any or all of the things in this certificate expressed and implied as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

Form 106. Interpretation Clause.

It is the intention that the objects and powers specified and clauses contained in this paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects and powers specified in each of the clauses of this paragraph shall be regarded as independent objects and powers, and words joined together by the word "and" or "or" shall give power both conjunctively and severally to pursue the objects they express.

Form 107. Interpretation Clause.

Nothing herein set forth is to be construed to authorize the formation hereby of an insurance, safe deposit or trust company, banking corporation or savings bank or corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions aforesaid.

Note.—Such clauses as this are used where the objects stated might be construed as an attempt to include powers prohibited to corporations organized under general incorporations acts, such as the power to do a railway, insurance, banking, etc., business.

Form 108. By-Laws—Simple Form.

ARTICLE I.

STOCKHOLDERS.

SECTION I. Stockholders' meetings shall be held at the principal office or place of business of this company.

SECTION II. The annual meeting of the stockholders of this company shall be held on the second Tuesday in January of each year at twelve o'clock, noon.

SECTION III. A notice of such meeting, written or printed shall be mailed to each stockholder at his postoffice address appearing upon the records of the company, ten days before each annual or special meeting of the stockholders, which notice, in case of a special meeting, shall state the object or objects for which it is called. Special meetings of the stockholders may be called by a like notice at any time by the president or by stockholders owning ten per cent. of the entire capital stock, whose names shall be signed to the notices of such meeting. No business shall be transacted at a special meeting except as stated in the notice sent to stockholders, unless by the unanimous consent of all stockholders, either in person or by proxy, all such stock being represented at the meeting.

SECTION IV. Upon failure to hold any annual meetings as herein provided, such meeting may be called by the president or by the holders of ten per cent. of the capital stock, in the same manner as a special meeting.

SECTION V. At any meeting of the stockholders a quorum for the transaction of business shall consist of a majority of the voting stock of the company represented by the stockholders in person or by proxy.

SECTION VI. Directors to manage the business of the corporation shall be elected at the annual meeting of the stockholders, which election shall be by ballot and shall be conducted by two inspectors appointed by the president for that purpose.

SECTION VII. At all stockholders' meeting, when questions are voted upon, each stockholder or his proxy may cast one vote for each share of stock owned by him.

SECTION VIII. All proxies shall be in writing and properly signed. Proxies shall not be granted for a longer period than six months.

SECTION IX. The president shall call each meeting of stockholders together, when they shall choose a chairman to preside over their meeting. The secretary of the company, or in his absence the secretary appointed by such chairman, shall keep a faithful record of the proceedings of all stockholders' meetings.

SECTION X. In case of any tie vote on an affirmative proposition, the motion shall be deemed to have been lost. No action shall be taken by virtue of any vote at a stockholders' meeting unless carried by a majority vote.

SECTION XI. The following order of business shall be observed at all annual and special meetings of the stockholders so far as practicable.

1. Ascertaining that a quorum is present.
2. Reading, correction and approval of minutes of previous meetings.
3. Reports of president, treasurer and secretary, respectively.
4. Reports of committees.
5. Election of directors.
6. Unfinished business.
7. New business.

ARTICLE II.

STOCK.

SECTION I. Certificates of stock shall be in a form adopted by the board of directors and shall be signed by the president or vice-president and the treasurer and attested by the corporate seal.

SECTION II. Certificates of stock shall be issued in numerical order from the stock certificate book and the certificates shall be numbered consecutively. Certificates as issued shall be taken from a stub book and a full record of each entered on the corresponding stub.

SECTION III. All certificates of stock transferred by indorsement thereon shall be surrendered for cancellation and new certificates issued to the purchasers or assignees. All surrendered certificates shall be indorsed with the date of cancellation and pasted to the corresponding stubs in the stock book.

SECTION IV. Transfers of stock may only be made upon the books of the company and no transfers shall be entered except upon the surrender of the certificate representing the transferred stock, properly indorsed. No transfers of stock shall be made within twenty days before a general election nor within ten days before the payment of a dividend.

SECTION V. The board of directors may issue duplicate certificates of stock upon proof that any such certificates have been lost or destroyed, taking a satisfactory bond of indemnity against any loss or claims that the company may incur by reason of issuing such duplicate certificates. But the board of directors may impose additional conditions before issuing such certificates and shall not be compelled to issue any duplicate certificates except upon the order of a court of competent jurisdiction.

SECTION VI. All stock of the company which may be donated to, or purchased by the company, shall be held subject to disposal by the action of the board of directors. It shall neither vote nor participate in dividends while so held.

ARTICLE III.

DIRECTORS AND OFFICERS.

SECTION I. A board of nine directors shall be chosen annually by the stockholders at their annual meeting, who shall constitute a governing board to manage the affairs of the company. And no person shall be elected nor serve as a director unless he shall own at least one share of stock in the company at the time of his election and continuously during his term of office.

SECTION II. All elections for directors shall be by ballot. The polls shall be open for at least one hour between the hours of 1:00 and 9:00 o'clock P. M.

SECTION III. Vacancies in the board of directors by reason of death, resignation or other cause shall be filled by the remaining directors choosing from among the stockholders a director to fill the unexpired term.

SECTION IV. In case of the death, resignation, or disqualification of the entire board of directors a new board may be elected for the unexpired term at a special meeting of the stockholders called for that purpose.

SECTION V. Resignations of directors shall be in writing addressed to the board.

SECTION VI. Any director may be removed from office for fraud, crime or misconduct in office by an affirmative vote of six directors, in which case the vacancy shall be filled by the board.

SECTION VII. The board of directors shall hold a meeting at the principal office of the company on the first Monday in each month and at other times on the call of the president or vice-president or of three members of the board.

SECTION VIII. The board of directors may adopt rules and regulations for the calling and conduct of meetings of the board and the management of the affairs of the company not inconsistent with law nor with these by-laws.

SECTION IX. At the first meeting of the board of directors each year, following the election of directors at the annual stockholders meeting, the board of directors shall choose a president, vice-president, secretary and treasurer, who shall serve for one year and until their successors are elected and qualified. The president and vice-president shall be members of the board of directors. The same person may be elected to two of such offices.

SECTION X. The salaries of all officers shall be fixed by the board of directors, and may be changed from time to time by a majority vote of the board.

SECTION XI. The president shall preside at all meetings and join with the secretary in executing all instruments of writing, requiring formal execution on the part of the company. He shall perform such other duties as are assigned him by the board of directors. The vice-president shall perform the duties and exercise the powers of the president in case of his absence or disability.

SECTION XII. The treasurer shall give a bond for the faithful performance of his duties in such sum and with such sureties as may be required by the board of directors. He shall have charge and custody of the funds of the company, subject to such regulation as to keeping them in a bank or trust company, and countersigning checks, as the board of directors may impose. He shall keep such books and account and make such reports as may be required by the board of directors.

SECTION XIII. The secretary shall keep a faithful record of the proceedings of all corporation meetings. He shall have charge of the corporation seal and of its stock and transfer books, and shall affix the seal to such instruments as are required by the board of directors, and make transfers of stock upon proper request, as provided by law and these by-laws. He shall keep such other books and perform such duties as the board of directors may prescribe.

ARTICLE IV.

SEAL.

Section I. The seal of the company shall consist of two metal discs, with the name of the company, ... in circular form about the outer edge and the words "Corporation Seal, New York," in the center thereof, so mounted as to be capable of impressing said words on paper in raised letters.

ARTICLE V.

DIVIDENDS.

Section I. Dividends shall be declared annually, or oftener, as determined by the board of directors. The board of directors may, from time to time, transfer any part of the earnings of the company to a surplus fund, but no part of the net earnings of any year shall be set aside as surplus until after the payment of a dividend of at least four (4) per cent. upon the capital stock, out of the net profits.

ARTICLE VI.

AMENDMENTS.

Section I. These by-laws may be amended, repealed or altered at any regular meeting of the stockholders or at any special meeting called for that purpose upon due notice of its object by a majority vote of the stock represented at such meeting.

Section II. The board of directors may suspend the effect of any by-law and enact a substitute therefor, to be effective until the proposed amendment, repeal, or alteration shall be submitted to a stockholders' meeting, if two-thirds of all the directors shall vote in favor of such action.

Section III. The board of directors may enact any additional by-laws not inconsistent with law or the by-laws adopted by the stockholders.

Form 109. By-Laws of United States Steel Corporation.

ARTICLE I.

STOCKHOLDERS.

Section 1. *Annual Meeting.* A meeting of the stockholders of the company shall be held annually at the principal office of the company in the state of New Jersey at twelve o'clock noon on the third Monday in February in each year, if not a legal holiday, and if a legal holiday, then on the next succeeding Monday not a legal holiday, for the purpose of electing directors, and for the transaction of such other business as may be brought before the meeting.

It shall be the duty of the secretary to cause notice of each annual meeting to be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J.; New York, N. Y.; Chicago, Ill., and Pittsburg, Pa. Nevertheless, a failure to publish such notice, or any irregularity in such notice, or in the publication thereof, shall not affect the validity of any annual meeting, or any proceedings at any such meeting.

SECTION 2. *Special meetings.* Special meetings of the stockholders may be held at the principal office of the company in the state of New Jersey, whenever called in writing, or by a vote, by a majority of the board of directors.

Notice of each special meeting, indicating briefly the object or objects thereof, shall, by the secretary, be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J.; New York, N. Y.; Chicago, Ill., and Pittsburg, Pa. Nevertheless, if all the stockholders shall waive notice of a special meeting, no notice of such meeting shall be required; and whenever all the stockholders shall meet in person or by proxy, such meeting shall be valid for all purposes without call or notice, and at such meeting any corporate action may be taken.

SECTION 3. *Quorum.* At any meeting of the stockholders the holders of one-third of all the shares of the capital stock of the company, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a larger number shall be required by law, and, in that case, the representation of the number so required shall constitute a quorum.

If the holders of the amount of stock necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place fixed by these by-laws for an annual meeting, or fixed by notice as above provided for a special meeting, called by the directors, a majority in interest of the stockholders present in person or by proxy may adjourn, from time to time, without notice other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

SECTION 4. *Organization.* The president, and in his absence the chairman of the executive committee, shall call meetings of the stockholders to order, and shall act as chairman of such meetings. The board of directors may appoint any stockholder to act as chairman of any meetings in the absence of the president and of the chairman of the executive committee.

The secretary of the company shall act as secretary at all meetings of the stockholders; but in the absence of the secretary at any meeting of the stockholders the presiding officer may appoint any person to act as secretary of the meeting.

SECTION 5. *Voting.* At each meeting of the stockholders every stockholder shall be entitled to vote in person, or by proxy appointed by instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting; and he shall have one vote for each share of stock standing registered in his name at the time of the closing of the transfer books for said meeting. The votes for directors, and, upon demand of any stockholder, the votes upon any question before the meeting, shall be by ballot.

At each meeting of the stockholders a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the secretary or by the treasurer, shall be furnished. Only the person in whose names shares of stock stand on the books of the company at the time of the closing of the transfer books for such meeting, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

Prior to any meeting, but subsequent to the time of closing the transfer books for such meeting, any proxy may submit his powers of attorney to the secretary, or to the treasurer, for examination. The certificate of the secretary, or of the treasurer, as to the regularity of such powers of attorney, and as to the number of shares held by the persons who severally and respectively executed such powers of attorney shall be received as *prima facie* evidence of the number of shares represented by the holder of such powers of attorney for the purpose of establishing the presence of a quorum at such meeting, and of organizing the same and for all other purposes.

SECTION 6. *Inspectors.* At each meeting of the stockholders the polls shall be opened and closed; the proxies and ballots shall be received and be taken in charge, and all questions touching the qualification of voters and the validity of proxies, and the acceptance or rejection of votes, shall be decided by three inspectors.

Such inspectors shall be appointed by the board of directors before or at the meeting, or, if no such appointment shall have been made, then by the presiding officer at the meeting. If for any reason any of the inspectors previously appointed shall fail to attend or refuse or be unable to serve, inspectors in place of any so failing to attend, or refusing or unable to attend, shall be appointed in like manner.

ARTICLE II.

BOARD OF DIRECTORS.

SECTION 1. *Number, classification and term of office.* The business and the property of the company shall be managed and controlled by the board of directors.

As provided in the certificate of incorporation, the directors shall be classified in respect of the time for which they shall severally hold office, by dividing them into three classes, each class consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years; the directors of the third class shall be elected for a term of three years. At each annual election the successors to the directors of the class whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

The number of directors shall be twenty-four, but the number of directors may be altered from time to time by the alteration of these by-laws.*

In case of any increase of the number of directors, the additional directors shall be elected by the directors then in office; one-third of such additional directors for the unexpired portion of the term of one year; one-third for the unexpired portion of the term of two years, and one-third for the unexpired portion of the term of three years, so that each class of directors shall be increased equally.

Every director shall be a holder of at least one share of the capital stock of the company. Each director shall serve for the term for which he shall have been elected, and until his successor shall have been duly chosen.

At all elections of the directors the polls shall remain open for at least one hour, unless every registered owner of shares has sooner voted in person or by proxy, or in writing has waived the statutory provision.

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* In states where the number of directors is fixed by statute, or where the statute requires that the number be fixed by the articles of incorporation, this clause should be omitted.

SECTION 2. *Vacancies.* In case of any vacancy in the directors of any class through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of his successor.

Such vacancy shall be filled upon and after nominations therefor shall have been made by the finance committee.

SECTION 3. *Place of Meeting, etc.* The directors may hold their meetings, and may have an office and keep the books of the company (except as otherwise may be provided for by law) in such place or places in the state of New Jersey or outside of the state of New Jersey as the board from time to time may determine.

SECTION 4. *Regular Meetings.* Regular meetings of the board of directors shall be held monthly on the first Tuesday of each month, if not a legal holiday, and if a legal holiday, then on the next succeeding Tuesday not a legal holiday. No notice shall be required for any such regular monthly meeting of the board.

SECTION 5. *Special Meetings.* Special meetings of the board of directors shall be held whenever called by the president, or by one-third of the directors for the time being in office.

The secretary shall give notice of each special meeting by mailing the same at least two days before the meeting or by telegraphing the same at least one day before the meeting to each director; but such notice may be waived by any director. At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

SECTION 6. *Quorum.* A majority of the board of directors shall constitute a quorum for the transaction of business; but, if at any meeting of the board, there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

The affirmative vote of at least two-fifths of all the directors for the time being in office shall be necessary for the passage of any resolution.

SECTION 8. *Order of Business.* At meetings of the board of directors business shall be transacted in such order as, from time to time, the board may determine by resolution.

At all meetings of the board of directors the president, or in his absence, the chairman of the executive committee, or in the absence of both of these officers, the chairman of the finance committee shall preside.

SECTION 9. *Contracts.* Inasmuch as the directors of this company are men of large and diversified business interests, and are likely to be connected with other corporations with which from time to time this company must have business dealings, no contract or other transaction between this company and any other corporation shall be affected by the fact that directors of this company are interested in, or are directors or officers of, such other corporation if, at the meeting of the board, or of the committee of this company making, authorizing or confirming such contract or transaction, there shall be present a quorum of directors not so interested; and any director individually may be a party to, or may be interested in, any contract or transaction of this company, providing that such contract or transaction shall be approved or be ratified by the affirmative vote of at least ten directors not so interested.

The board of directors in its discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders, or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the capital stock of the company which is represented in person or by proxy at such meetings (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation.

SECTION 10. *Compensation of Directors.* For his attendance at any meeting of the board of directors, or of any committee of the board, every director shall receive an allowance of ten cents for every mile traveled by him for attendance at such meeting, and also the sum of twenty dollars for attendance at each meeting. The same mileage allowance shall be made to any officer who, by direction of the board, or of the president, shall attend any such meeting.

ARTICLE III.

EXECUTIVE COMMITTEE AND FINANCE COMMITTEE.

SECTION 1. The board of directors shall elect from the directors an *executive committee* and a *finance committee*, and shall designate for each of those committees a chairman, who shall continue to be chairman of the committee during the pleasure of the board of directors.

The board of directors shall fill vacancies in the executive committee or in the finance committee by election from the directors, and at all times it shall be the duty of the board of directors to keep the membership of each of such committees full, with due regard to the qualifications for such membership indicated in this article of the by-laws.

All action by the executive committee, or by the finance committee, shall be reported to the board of directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the board of directors; *provided*, that no rights or acts of third parties shall be affected by any such revision or alteration.

The executive committee and the finance committee each shall fix its own rules of proceeding, and shall meet where and as provided by such rules, or by resolution of the board of directors, but in every case the presence of a majority shall be necessary to constitute a quorum.

In every case the affirmative vote of a majority of all the members of the committee shall be necessary to its adoption of any resolution.

The chairman and each of the members of the executive committee shall receive such compensation for their services as from time to time shall be fixed by the finance committee and be approved by the board of directors.

SECTION 2. *The executive committee* shall consist of six members, besides the president, and the chairman of the finance committee, each of whom, by virtue of his office, shall be a member of the executive committee. So far as practicable each of the six elected members of the executive committee shall be a person having, or having had, personal experience in the conduct of one or the other of the branches of manufacture or mining, or of transportation in which the company is interested; and, so far as practicable, the six elected members shall be taken equally from the three classes of directors. Unless otherwise ordered by the board of directors, each elected member of the executive committee shall continue to be a member thereof until the expiration of his term of office as a director.

During the intervals between the meetings of the board of directors the executive committee shall possess, and may exercise, all the powers of the board of directors in the management and direction of the manufacturing, mining and transportation operations of the company, and of all other business and affairs (except the matters hereinafter assigned to the finance committee) in such manner as the executive committee shall deem best for the interests of the company, in all cases in which specific directions shall not have been given by the board of directors.

During the intervals between the meetings of the executive committee the chairman thereof shall possess and may exercise such of the powers vested in the executive committee as from time to time may be conferred upon him by resolution of the board of directors, or of the executive committee.

SECTION 3. *The finance committee* shall consist of four members, besides the president, and the chairman of the executive, each of whom, by virtue of his office, shall be a member of the finance committee. So far as practicable each of the four elected members of the finance committee shall be a person of experience in matters of finance, and so far as practicable the four elected members shall be taken equally from the three classes of directors. Unless otherwise ordered by the board of directors, each elected member of the finance committee shall continue to be a member thereof until the expiration of his term of office as a director.

The finance committee shall have special and general charge and control of all financial affairs of the company. The general counsel, the treasurer, the auditor and the secretary, and their respective offices, shall be under the direct control and supervision of the finance committee.

During the intervals between the meetings of the board of directors, the finance committee shall possess, and may exercise, all the powers of the board of directors in the management of the financial affairs of the company, including its purchases of property and the execution of legal instruments with or without the corporate seal in such manner as said committee shall deem to be best for the interests of the company, in all cases in which specific directions shall not have been given by the board of directors.

During the intervals between the meetings of the finance committee, and subject to its review, the chairman thereof shall possess, and may exercise any of the powers of the committee, except as from time to time shall be otherwise provided by resolution of the board of directors, or of the finance committee, but not of the executive committee.

Except as otherwise provided by the by-laws, or by resolution of the board of directors, all salaries and compensations paid or payable by the company shall be fixed by the finance committee.

No director shall become a salaried employe of the company except by special vote of the finance committee.

ARTICLE IV.

OFFICERS.

SECTION 1. *Officers.* The executive officers of the company shall be a president, a vice-president, or more than one vice-president, a general counsel, a treasurer, a secretary and an auditor, all of whom shall be elected by the board of directors.

The board of directors may appoint such other officers as they shall deem necessary, who shall perform such duties as from time to time may be prescribed by the board of directors.

The powers and duties of the treasurer and secretary may be exercised and performed by the same person.

In its discretion the board of directors, by the vote of a majority thereof, may leave unfilled for any such period as it may fix by resolution any office except those of president, treasurer, secretary and auditor.

All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole board of directors. All officers, agents and employes, other than officers appointed by the board of directors, shall hold office at the discretion of the committee or of the officer appointing them.

The finance committee shall have power to suspend the general counsel, the treasurer, the secretary and the auditor, and to remove any one in the department of the general counsel, of the treasurer, or of the secretary or of the auditor. The executive committee shall have power to remove all officers, agents and employes of the company, except officers elected or appointed by the board of directors, and except officers, agents and employes in the department of the treasurer, of the secretary, of the general counsel or of the auditor.

SECTION 2. *Powers and Duties of the President.* The president shall preside at all meetings of the stockholders, and of the board of directors, and by virtue of his office he shall be a member (but not chairman) of the executive committee and of the finance committee. Subject to the executive committee, he shall have general charge of the business of the company, including manufacturing, mining and transportation, may sign and execute all authorized bonds, contracts or other obligations in the name of the company, and with the treasurer or an assistant treasurer may sign all certificates of the shares in the capital stock of the company. He shall do and perform such other duties as from time to time may be assigned to him by the board of directors.

SECTION 3. *Vice-Presidents.* The board of directors may appoint a vice-president or more than one vice-president. Each vice-president shall have such powers and shall perform such duties as may be assigned him by the board of directors.

SECTION 4. *The General Counsel.* The general counsel shall be the chief consulting officer of the company in all legal matters, and, subject to the board of directors and the finance committee, shall have general control of all matters of legal import concerning the company.

SECTION 5. *Powers and Duties of Treasurer.* The treasurer shall have custody of all the funds and securities of the company which may have come into his hands; when necessary or proper he shall indorse, on behalf of the company for collection, checks, notes and other obligations, and shall deposit the same to the credit of the company in such bank or banks or depositary as the board of directors or the finance committee may designate; he shall sign all receipts and vouchers for payments made to the company; jointly with such other officer as may be designated by the finance committee he shall sign all checks made by the company, and shall pay out and dispose of the same under the direction of the board or of the finance committee; he shall sign, with the president, or such other person or persons as may be designated for the purpose by the board of directors or the finance committee, all bills of exchange and promissory notes of the company; he may sign, with the president or a vice-president, all certificates of shares in the capital stock; whenever required by the board of directors or by the finance committee he shall render a statement of his cash account; he shall enter regularly, in books of the company to be kept by him for the purpose, full and accurate accounts of all moneys received and paid by him on account of the company; he shall, at all reasonable times, exhibit his books and accounts to any director of the company upon application at the office of the company during business hours, and he shall perform all acts incident to the position of treasurer, subject to the control of the board of directors or of the finance committee. By virtue of his office the treasurer shall be assistant secretary.

He shall give a bond for the faithful discharge of his duties in such sum as the board of directors or the finance committee may require.

SECTION 6. *Assistant Treasurers.* The board of directors or the finance committee may appoint an assistant treasurer or more than one assistant treasurer. Each assistant treasurer shall have such powers and shall perform such duties as may be assigned to him by the board of directors, or by the finance committee.

SECTION 7. *Powers and Duties of Secretary.* The secretary shall keep the minutes of all meetings of the board of directors, and the minutes of all meetings of the stockholders, and also (unless otherwise directed by the finance committee) the minutes of all committees in books provided for that purpose; he shall attend to the giving and serving of all notices of the company; he may sign with the president in the name of the company all contracts authorized by the board of directors, or by the finance committee, and, when so ordered by the board of directors or the finance committee, he shall affix the seal of the company thereto; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the board of directors or the finance committee may direct, all of which shall, at all reasonable times, be open to the examination of any director, upon application at the office of the company during business hours, and he shall in general perform all the duties incident to the office of secretary, subject to the control of the board of directors and of the finance committee. By virtue of his office the secretary shall be assistant treasurer.

SECTION 8. *Assistant Secretaries.* The board of directors or the finance committee may appoint one assistant secretary or more than one assistant secretary. Each assistant secretary shall have such powers and shall perform such duties as may be assigned to him by the board of directors, or by the finance committee.

SECTION 9. *Auditor.* The auditor shall be the principal officer in charge of the accounts of the company, and shall perform such duties as from time to time may be assigned to him by the board of directors or the finance committee.

SECTION 10. *Voting upon Stocks.* Unless otherwise ordered by the board of directors, or by the finance committee, the chairman of the finance committee or the chairman of the executive committee shall have full power and authority in behalf of the company to attend and to act and to vote at any meetings of the stockholders of any corporation in which the company may hold stock, and at any such meeting shall possess and may exercise any and all the rights and powers incident to the ownership of such stock and which, as the owner thereof, the company might have possessed and exercised if present. The board of directors of the finance committee, by resolution, from time to time, may confer like powers upon any other person or persons.

ARTICLE V.

CAPITAL STOCK—SEAL.

SECTION 1. *Certificates of Shares.* The certificates for shares of the capital stock of the company shall be in such form, not inconsistent with the certificate of incorporation, as shall be prepared or be approved by the board of directors. The certificates shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the company's books.

No certificate shall be valid unless it be signed by the president or a vice-president, and by the treasurer or an assistant treasurer. All certificates surrendered to the company shall be cancelled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

SECTION 2. *Transfer of Shares.* Shares in the capital stock of the company shall be transferred only on the books of the company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

SECTION 3. *Regulations.* The board of directors, and the finance committee also, shall have power and authority to make all such rules and regulations as respectively they may deem expedient concerning the issue, transfer and registration of certificates for shares of the capital stock of the company.

The board of directors or the finance committee may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signature of such transfer agent and of such registrar of transfers.

SECTION 4. *Closing of Transfer Books.* The stock transfer books shall be closed for the meetings of the stockholders, and for the payment of dividends, during such periods as from time to time may be fixed by the board of directors or by the finance committee, and during such periods no stock shall be transferable.

SECTION 5. *Dividends.* The board of directors may declare dividends from the surplus or net profits of the company over and above the amount which from time to time may be fixed by the board as the amount to be reserved as working capital.

The dates for the declaration of dividends upon the preferred stock and upon the common stock of the company *shall be the days* by these by-laws fixed for the regular monthly meetings of the board of directors in the months of April, July, October and January in each year, on which days the board of directors, in its discretion, shall declare what, if any, dividends shall be declared upon the preferred stock, and the common stock, or either of such stocks.

The dividends on the preferred stock shall be payable quarterly on the fourth Wednesday next after the several dates of the declaration thereof.

SECTION 6. *Working Capital.* The directors shall not be required in January in each year, after reserving, over and above its capital stock paid in as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; but the board of directors may fix a sum which may be set aside or reserved, over and above the company's capital paid in, as a working capital for the company, and from time to time they may increase, diminish and vary the same in their absolute judgment and discretion.*

SECTION 7. *Corporate Seal.* The board of directors shall provide a suitable seal, containing the name of the company, which seal shall be in charge of the secretary, if and when so directed by the board of directors or by the finance committee. A duplicate of the seal may be kept and used by the treasurer or by any assistant secretary or assistant treasurer.

ARTICLE VI.

AMENDMENTS.

SECTION 1. The board of directors shall have power to make, amend and repeal the by-laws of the company, by a vote of a majority of all of the directors, at any regular or special meeting of the board, *provided*, that notice of intention to make, amend or repeal the by-laws in whole or in part shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all of the directors.

Form 110. Common Stock Certificate and Stub.

United States of America—Incorporated under the laws of Indiana.

Number.	Shares.
17	50

THE KING-RICHARDSON MANUFACTURING COMPANY, Indianapolis, Ind.

This Certifies that Charles Bishop is the owner of fifty shares of the capital stock of The King-Richardson Manufacturing Company, of Indianapolis, transferable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this certificate properly indorsed.

IN WITNESS WHEREOF, the said corporation has caused this certificate to be signed by its duly authorized officers and to be [SEAL] sealed with the seal of the corporation this .... day of May, A. D. 19.....

FRANK RICHARDSON,
Treasurer.

JOHN M. KING,
President.

(Stub.)
CERTIFICATE*
No. 17.
For fifty (50) Shares.
Issued to
Charles Bishop, Indianapolis.
Dated, May ...., 19....
From Whom Transferred
....
Dated, ..., 19....

NO. ORIGINAL CERTIFICATE.	NO. ORIGINAL SHARES.	NO. OF SHARES TRANSFERRED.
....	....	....
....	....	....
....	....	....

Received Certificate No. 17. For fifty (50) Shares this .... day of May, 19..... Charles Bishop.

Form 111. Common Stock Certificate Containing Notice and Terms of Preferred Stock.

United States of America—Incorporated under the laws of Indiana.

NUMBER. SHARES.
54 ..

Clark & Roberts Company, Indianapolis, Ind.
Main office, Indianapolis, Ind.

CAPITAL STOCK, COMMON STOCK, $150,000
$200,000 PREFERRED STOCK, 50,000

This Certifies that .... is the owner of ...... shares of one hundred $100) dollars each of the common† Capital stock of the Clark & Roberts Company. This certificate is transferable only on the books of the company at Indianapolis, Ind., by the owner thereof, in person or by duly authorized attorney, upon its surrender property indorsed.

It is mutually agreed between the holder hereof and the Clark & Roberts Company and its stockholders as follows: The preferred capital stock is entitled to receive preferential dividends from the net earnings of the company at the rate of seven (7) per centum per annum, payable semi-annually, before any dividend shall be set apart or paid from the earnings of any period upon the common capital stock.

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* This form will also answer for the stub of a preferred stock certificate, but if both common and preferred stock have been issued the heading may specify the kind of certificate issued.

† The word "Preferred" appears here on the preferred certificate of this company, which is the only difference in wording.

Dividends upon the preferred stock shall be cumulative, and if the proportion of the net earnings set apart in any year for dividends shall not be sufficient to pay the dividend for such year at the rate of seven (7) per centum per annum upon said preferred capital stock, then the same shall be made up from any profits of any later period. After declaring and providing for the payment of a semi-annual dividend of three and one-half (3½) per centum upon the preferred capital stock, together with arrearages of dividends due thereon, such portion of the remaining net earnings set apart for dividends may be used for paying dividends on the common capital stock as the board of directors may decide.

The power to fix the amount to be reserved as working capital for the organization, and the power to declare dividends from the net earnings of the company are vested in the board of directors. The dividends upon the common capital stock of the company may be declared and made payable semi-annually or annually, as the board of directors may from time to time determine. The par value of the preferred capital stock, in the event of insolvency or dissolution of the company, making necessary a distribution of the assets, shall be repaid in full after the payment of its obligations, before any sum whatever shall be distributed upon the common capital stock; but after a complete repayment of the par value of the preferred capital stock, together with arrearages of dividends due thereon, the common capital stock shall be entitled to receive the entire assets remaining. Preferred capital stock, in whole or in part, may, after twenty years from date of issue, at the time of paying any semi-annual dividend, be retired by the corporation at par, upon six months' notice in writing, by paying the owner or owners thereof the par value, together with any dividends due thereon. Preferred stock may be purchased and cancelled by the board of directors by agreement with the holder thereof, at any time after one year from the date of its issue.

Witness the corporate seal of The Clark & Roberts Company and the signature of its president and treasurer.

Dated: Indianapolis, Indiana, this .... day of ...., 19.....

...................,	...................,
Treasurer.	President.

Shares $100 each.

Form 112. Founders' Shares—Stock Certificate.

Incorporated under the laws of New Jersey.

NUMBER. SHARES.

MORGAN MILLING COMPANY, Trenton, New Jersey.
Capital Stock, $100,000.

This certifies that .... is the owner of .... founders' shares, numbered (giving them), of one hundred dollars each, of the capital stock of the Morgan Milling Company. This certificate is transferable only on the books of the company by the owner thereof in person, or by duly authorized attorney, upon its surrender properly indorsed.

It is mutually agreed between the said company and the holder hereof that said founders' shares are subject to the provisions of a certain resolution adopted by the stockholders of said company on the .... day of ...., 1905, which provided for the creation and issue of not more than two hundred founders' shares of the par value of one hundred dollars each of the capital stock of said company, subject to redemption as specified in said resolution. And the holder of this certificate acknowledges notice of all the provisions of said resolution, and hereby assents to the same and agrees to hold his said founders' shares evidenced by this certificate subject thereto.

IN WITNESS WHEREOF the said Morgan Milling Company has caused the names of its president and treasurer to be signed to this certificate and its corporate seal to be affixed hereto.

(Seal.)

................, ...,
Treasurer. President.

Attest ...., Secretary.

Form 113. Certificate of Preferred Stock.

No. ...... Incorporated under the laws of New Jersey. 10 Shares.

JOHNSON ELECTRIC COMPANY.
Capital Stock, $250,000.
Common Stock, $150,000.
Preferred Stock, $100,000.
Full-paid and nonassessable.

This is to certify that George Hyde is the owner of ten shares of the preferred stock of the Johnson Electric Company, transferable only on the books of the company by the said owner, in person or by duly authorized attorney, upon surrender of this certificate properly indorsed.

The preferred stock represented by this certificate is entitled to an annual dividend of six per cent. (6%), payable out of the net profits of the company before any dividend is paid upon the common stock. Should the net profits in any year be insufficient to pay said preferred dividend, either in whole or in part, any unpaid portion thereof shall become a charge against the net profits of the company, and shall be paid out in full of said net profits before any dividends are paid upon the common stock.

The preferred stock is subject to redemption at the option of the company at any time after ten years from the .... day of June, 19...., upon payment of one hundred and five dollars ($105) per share and any accumulated dividends. Preferred stock is not entitled to vote at stockholders' meetings of the company, nor to participate in profits beyond its fixed, preferential, cumulative, annual dividend of six per cent.

Witness the seal of the company and the signatures of its duly authorized officers this .... day of ...., 19..... (Seal.)

................, ...,
Treasurer. President.

Shares $100 each.

Form 114. Certificate of Convertible Preferred Stock.

No. .... Shares.

.... Railroad Company.

Preferred Capital Stock.

This is to certify that .... or bearer is entitled to .... shares of .... dollars each, of the preferred and nonvoting capital stock of the .... Railroad Company.

This stock constitutes a lien upon the property and net earnings of the company next after the company's existing first mortgage. It does not entitle the holder to vote thereon. After the first day of ...., 19...., it is entitled to, and carries interest at the rate of .... per cent. per annum, payable semi-annually, represented by interest coupons attached to this certificate. Such interest is only payable out of the net earnings of the company after the payment of interest upon its existing first mortgage bonds, and the cost of maintenance and operation. A statement showing the business of the company for the half of its fiscal year next preceding shall be exhibited at the office of the company in .... to the holder of this certificate, at the maturity of these interest coupons and the net earnings applicable to such interest shall be reckoned for such period. Such interest is not to accumulate as a charge, and the coupons representing unearned interest must be surrendered and canceled on the payment in whole or in part of the subsequently maturing coupons. At any time after the .... day of ...., 19...., and before the .... day of ...., 19...., this certificate may be converted into the common capital stock of the company. If not converted, then to become the preferred four per cent. noncumulative stock. The company will create no mortgage on its main line other than its first mortgage, nor on any part thereof, expressly subject to the prior lien of this certificate, without the consent of the holders of at least two-thirds of this stock present at a meeting, of which reasonable notice must be given to each registered stockholder, and by publication for at least .... successive weeks, publishing in two leading daily newspapers in the cities of .... and .... One-third of the entire issue of this stock, present in person or by proxy, shall constitute a quorum. Nor will the company increase the issue of these certificates of stock, without consent obtained as above. This certificate of stock shall be transferable by delivery or by transfer on the book of the company in the city of ...., after registration of ownership, certified hereon by the transfer agent of the company.

(Countersigned.) (Signature.)

COUPON.

The .... Railroad Company will pay to bearer on the .... day of ...., upon the surrender of this warrant, at its office or agency, in the city of ...., any amount that may be due hereon under the conditions set forth in the certificate of stock to which this is attached, not exceeding the sum of .... dollars.

Form 115. Certificate of Common Stock Without Par or Nominal Value. New York.

Full Paid and Nonassessable.

No. .... Shares.

UNITED MOTORS CORPORATION.

Incorporated under the laws of the State of New York.

Total authorized stock, 1,200,000 shares, all without nominal or par value.

"Class A," 1,195,000 shares. "Class B," 5,000 shares.

This certifies that .... is the owner of .... shares of the "Class A" stock, full paid and nonassessable, without nominal or par value, of United Motors Corporation, transferable in person or by attorney, on the books of the corporation, on surrender of this certificate duly indorsed.

The authorized stock of said corporation consists of 1,195,000 shares of "Class A" and 5,000 shares of "Class B" stock, all without nominal or par value. Only the holders of the "Class B" stock are entitled to voting power in said corporation, but the holders of "Class A" stock are entitled to all other rights and privileges of stockholders in said corporation. This certificate is not valid until countersigned by the transfer agent and registered by the registrar.

Witness the seal of the corporation and the signatures of its duly authorized officers this .... day of ...., 19.....

................,	................,
Asst. Secretary.	Vice-President.

Registered:
Bankers Trust Co., Registrar,
By ...., Asst. Secretary.
Countersigned:
Guaranty Trust Co. of New York,
By ...., Asst. Secretary.

Form 116. Certificate of Shares Without Par Value; Terms of Preferred Issue.

Incorporated under the Laws of the State of New York.
Cuba Cane Sugar Corporation.
Total Authorized Shares, 1,000,000.
Seven per cent. Cumulative Convertible Preferred Stock, 500,000 Shares of Par Value of $100 each.
Common Stock without Par Value, 500,000 Shares.

This is to certify that .... is the owner of .... fully paid and nonassessable shares without any nominal or par value in the common stock of Cuba Cane Sugar Corporation, transferable in person or by attorney upon the books of said corporation, upon surrender of this certificate duly indorsed. Any holder of preferred stock may at any time convert all or any of such shares held by him into common shares without par value, share for share, subject to such regulations as may from time to time be provided in the by-laws or by the board of directors. Upon such conversion the certificates for shares of preferred stock so surrendered shall be canceled, the number of shares of preferred stock that may be issued shall be accordingly decreased and the number of common shares without par value that may be issued shall be accordingly increased so that the total number of shares shall not be changed thereby. The holders of preferred stock shall be entitled to receive when and as declared by the board of directors from the surplus or net profits of the corporation, dividends at the rate of seven per cent. per annum, and no more, payable quarter-yearly. Such dividends on the preferred stock shall be payable before any dividend shall be paid or set apart on the common shares and shall be cumulative from January 1, 1916, so that if after that date dividends for any past quarter-yearly period at the rate of seven per cent. per annum shall not have been paid thereon, or set apart therefor, the deficiency shall be fully paid or set apart, but without interest, before any dividend shall be paid or set apart for the common shares. Whenever dividends at the rate of seven per cent. per annum on the preferred stock for all past quarter-yearly periods shall have been declared and the same shall have been paid or the funds for the payment thereof shall have been set apart, the Board of Directors may declare dividends on the common shares, payable at such time as the Board may fix out of any remaining surplus or net profits; always provided, however, that no dividends shall be declared or paid upon or set apart for the common shares that will reduce the accumulated surplus or net profits of the corporation below an amount equal to dividends in full for a period of two years upon all the preferred stock then issued and outstanding. In the event of any liquidation, dissolution or winding up of the corporation, except in voluntary dissolution, the holders of the preferred stock shall be entitled to be paid in full the par value thereof, and in the event of voluntary dissolution $120 per share, and in either event also all unpaid dividends accrued thereon before any amount shall be paid or assets distributed to the holders of the common shares, and after the payment to the holders of the preferred stock of the amount payable to them as hereinbefore provided, the remaining assets and funds shall be divided and paid to the holders of the common shares according to their respective shares.

The preferred stock may be redeemed in whole or in part on any dividend day, upon sixty days' notice given in such manner as may be prescribed by the by-laws or by the Board of Directors by paying $120 per share and all unpaid dividends accrued thereon, but if less than all of the outstanding shares are redeemed such redemption may be made pro rata. Preferred shares, notice of redemption of which shall have been given, shall cease to be convertible thirty days before the date fixed for redemption. No stockholder shall be entitled to subscribe for, purchase or receive any part of any new or additional issue of stock or of securities convertible into stock, provided that such stock or securities are issued for property. Each share is entitled to one vote. This certificate is not valid until countersigned by the transfer agent, and registered by the registrar.

In witness whereof the corporation has caused its corporate seal to be hereunto affixed and this certificate to be signed by its duly authorized officer this .... day of ...., 19.....

................, ...,
Assistant Secretary. Vice-President.
Registered: ....,
Columbia Trust Company, Registrar.
Countersigned: ....,
Guaranty Trust Company of New York, Transfer Agent.

Form 117. Form of Assignment and Transfer on Back of Stock Certificate.

For value received, I hereby sell, assign and transfer unto Charles Holliday, of Indianapolis, twenty (20) shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint Harry Alter my attorney to transfer the said stock on the book of the within named corporation with full power of substitution in the premises.

Dated June 12, 1917.

In presence of Richard Martindale.
Leroy Scott,
Witness.

Form 118. Short Form, Mortgage to Secure Bonds.

This mortgage made the .... day of ...., A. D. 19...., by the .... Company, of the city of Indianapolis, county of Marion, state of Indiana, party of the first part, hereinafter called the mortgagor, unto The .... Trust Company of the city of Indianapolis, county of Marion, state of Indiana, trustee for those holding the obligation secured by this instrument, party of the second part, hereinafter called the mortgagee.

Witnesseth, that said mortgagor in consideration of the sum of .... dollars, the receipt of which is hereby acknowledged, and for the purpose of securing the repayment of said sums with interest, as hereinafter provided, and the performance of the covenants hereinafter contained, hereby mortgages and warrants unto the said mortgagee, assigns or successors, in this trust, and their successors, the lands, premises and property situated in the city of Indianapolis, county of Marion and state of Indiana, described as follows: (here describe), together with all and singular the hereditaments and appurtenances belonging to said mortgagor, and situated on the above described premises, and all that may hereafter be put thereon or attached thereto in any way or form, together with the franchises belonging to said mortgagor.

Provided always, and these presents are upon the express condition, that whereas, the said .... Company, mortgagor, has executed bonds of the denomination of $1,000 each with coupons for the semi-annual interest thereon at the rate of .... per cent. per annum, bearing even date herewith, and delivered the same to the mortgagee, the principal sum of which said bonds is payable on the .... day of ...., A. D. 19...., and the interest thereon is payable on the .... days of .... and .... in each and every year hereafter until the said principal sum shall be paid according to the tenor and effect of said bonds and coupon interest notes, and which said principal and interest is payable at ...., if said mortgagor shall pay or cause to be paid said bonds and the interest thereon as above provided, and shall keep and perform the covenants and agreements herein contained by .... to be performed, then these presents and said bonds shall cease and shall be null and void. And the said .... Company, mortgagor for itself, successors and assigns, hereby covenants with said mortgagee, its legal representatives and assigns, as follows:

First. Said mortgagor will pay to said mortgagee, its legal representative and assigns, the said sum of .... dollars, with interest thereon, at the rate of .... per cent. per annum, payable ....annually, until the full payment of said principal sum according to the terms of said bonds aforementioned, and will pay interest at the rate of .... per cent. per annum, semi-annually, upon all overdue interest or principal from the time of its maturity.

Second. The said mortgagor within forty days after same shall become due and payable will pay all taxes and assessments, rates and charges, and all labor, mechanics or other liens of every name and nature which shall be levied or imposed upon said property, or upon or on account of this mortgage or the indebtedness secured hereby or upon the interest or estate in said property represented by this mortgage, whether levied or imposed against the said mortgagor or mortgagee, and the mortgagor hereby waives any and all claim or right against said mortgagee, its legal representatives or assigns or ..... successors in this trust, to any payments or rebate on or offset against the interest or principal of said indebtedness by reason of the payment of any of said taxes, assessments, rates, charges or labor or mechanics' liens. Provided, however, that if the sum of interest due under this mortgage in any one year, plus the taxes levied upon or on account of said mortgage in the same year shall exceed the rate of interest allowed by law to be stipulated therefor, that such excess of taxes shall be paid by said trustee and the party of the first part shall in no case be liable therefor.

Third. That the said mortgagor will keep all destructible property described in this mortgage or situated upon the lands described in this mortgage insured against loss and damage by fire in responsible insurance companies approved by the mortgagee, to an amount not less than .... dollars, and pay the premiums therefor. All loss in the policies for said insurance to be payable to the said mortgagee, as .... interest, created by this mortgage may appear, and will deliver the said policies, as soon as issued to said mortgagee.

Fourth. If said mortgagor makes default in the payment of any of the aforesaid taxes, assessments, rates and charges or labor, mechanics' or other liens, or in procuring and maintaining insurance as above covenanted, said mortgagee, its representatives or assigns may pay such taxes, assessments, rates and charges or labor, mechanics' or other liens and effect such insurance and the sum so paid shall be a further lien on the aforesaid premises and property under this mortgage, prior and superior to said bonds and coupons and payable forthwith, with interest at the rate of .... per cent. per annum.

Fifth. Should default be made in the payment of any instalment of principal maturing hereon before the whole thereof becomes due or of any instalment of interest when the same becomes due and payable or of any taxes, assessments, rates and charges or of any labor, mechanics' or other liens or of any premiums for insurance, or any part thereof, when the same are payable as above provided, and should the same or any part thereof remain unpaid for a period of thirty days, then and from thenceforth, the aforesaid principal sum with all arrearages of interest, shall at the option of said mortgagee, its legal representatives or assigns, become due and payable therefrom and thereafter, although the period above limited for the payment of the same shall not then have expired, anything hereinbefore or in said bonds contained to the contrary thereof in anywise notwithstanding.

Sixth. All the aforesaid covenants shall run with the land.

Seventh. That upon default being made in the payment of principal or interest hereon, or of any part thereof at the time the same becomes due and payable according to the terms hereof, the said mortgagee, its legal representative or assigns, are hereby authorized and empowered to foreclose this mortgage in any court of competent jurisdiction, and any judgment rendered in such suit in favor of the plaintiff therein shall include a reasonable fee for the attorney of the plaintiff for his services in such suit.

IN WITNESS WHEREOF the said mortgagor has hereunto set its hand and seal the day and year first above written.

THE .... COMPANY,
By ....,
President.

(Seal.)
Attest: ....,
Secretary.

STATE OF INDIANA, COUNTY OF MARION, SS:

Personally appeared before me, ..., a notary public in and for said county and state, the above named The .... Company, by its president, ..., and acknowledged the execution of the above and foregoing mortgage.

Witness my hand and notarial seal this .... day of ...., A. D. 19.....

.................,
(Seal.) Notary Public.

Form 119. First Mortgage Gold Bond of the Indianapolis and Cincinnati Traction Company.

(Convertible from Coupon to Registered Bond.)

The Indianapolis and Cincinnati Traction Company. First Mortgage Five Per Cent. Gold Bond. No. 1263.

Be it known that The Indianapolis and Cincinnati Traction Company, incorporated under the laws of Indiana, for value received, promises to pay to the bearer hereof, or if this bond shall be registered, then to the holder hereof registered according to the provisions hereinafter contained, without relief from valuation or appraisement laws, the sum of ONE THOUSAND DOLLARS in gold coin of the United States of the present standard of weight and fineness, at the office of the Farmers' Loan and Trust Company in the city of New York, on the first day of July, 1933, and also to pay interest thereon in like coin at the rate of five per cent. per annum on the first days of January and July in each year to the bearer of the respective coupons for such interest hereto annexed upon presentation thereof, at the time and place therein mentioned; but if the promisor shall make any default for six months in the payment of any interest hereon, or on any bond of this issue, the principal sum hereby secured shall become due and payable at any time thereafter while the interest remains in default, at the election of a majority in interest of the holders of the bonds secured by the indenture hereinafter mentioned at the time outstanding. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the promisor may be required to pay or retain therefrom under any present or future law of the United States, or of the state of Indiana, or any county or municipality therein. This bond is one of a series of four thousand similar bonds, amounting in the aggregate to four million dollars, all of which are equally secured by an indenture of first mortgage, dated the first day of July, 1903, whereby all the property, real and personal, easements, rights, franchises, and privileges, present and future, of the Indianapolis and Cincinnati Traction Company are mortgaged to the Farmers' Loan and Trust Company as trustee for the bondholders. No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, officer or director of the promisor, either directly or through the promisor, by virtue of any statute, or by enforcement of any assessment or otherwise, and any and all personal liability of the officers, directors and stockholders of the promisor in respect of said bonds is hereby expressly waived and released by every holder hereof. This bond until registered shall pass by delivery. This bond may be registered in books to be kept for that purpose at the office of the trustee, in the city of New York, and if so registered will thereafter be transferable only upon the said books at the office of the trustee by the owner in person or by attorney, unless the last preceding registration shall have been to bearer and the transfer by delivery thereby restored, and it shall continue to be susceptible of successive registrations and transfers at the option of the holder, but such registration shall not affect the negotiability of the annexed coupons. This bond is valid only when the Farmers' Loan and Trust Company has indorsed hereon a certificate that it is one of the bonds in the said indenture specified.

Witness the corporate seal of the Indianapolis and Cincinnati Traction Company and the signatures of its president and secretary on its behalf, the first day of July, in the year 1903.

THE INDIANAPOLIS AND CINCINNATI TRACTION COMPANY,
by

....................., ...
Secretary.   President.

TRUSTEE'S CERTIFICATE.
(On back of bond.)

The Farmers' Loan and Trust Company hereby certifies that this bond is one of the series described in the within mentioned mortgage amounting in the aggregate to four million dollars.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee.
By ...., President.

Form 120. Sinking Fund Bond.

[On the back the title as follows.]

No............ The Keithsburg Bridge Company First Mortgage Six Per Cent. Sinking Fund Bond, $1,000. Guaranteed by the Central Iowa Railway Company. Interest payable June 1st and December 1st. Principal due Just 1st, 1925.

TRUSTEE'S CERTIFICATE.—The Central Trust Company of New York hereby certifies that this bond is one of a series of bonds described in the mortgage or trust deed, within mentioned, and has been certified by this company in accordance with the terms of said trust deed.
CENTRAL TRUST CO. OF NEW YORK, Trustee, by .... President.

[On the face.]

No............ $1,000.

STATES OF ILLINOIS AND IOWA.
THE KEITHSBURG BRIDGE COMPANY.
FIRST MORTGAGE SIX PER CENT. SINKING FUND BOND.
GUARANTEED BY THE CENTRAL IOWA RAILWAY COMPANY.

Know all men by these presents, That the Keithsburg Bridge Company, a corporation organized and existing under the laws of the state of Illinois and vested also with certain franchises conferred by an act of congress, approved April 26, 1882, entitled "An Act to authorize the construction of a bridge across the Mississippi river at or near Keithsburg, in the state of Illinois, and to establish it as a Post Road," is indebted to the Central Trust Company of New York, or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which the said Bridge Company promises to pay to the bearer hereof in the city of New York, on the first day of June, in the year one thousand nine hundred and twenty-five, with interest thereon at the rate of six per cent. per annum, payable in the like lawful money, at its office or agency in the city of New York, on the first days of June and December in each year, upon the presentation and surrender of the coupons hereto attached as they severally become due, as provided herein. And in case of default in the payment of any half-yearly instalment of interest which shall have become due and been demanded, and such default shall have continued six months after demand, or in case of default in the payment of any sum into the sinking fund, as hereinafter provided, the principal of this bond shall become due in the manner and with the effect provided for in the trust deed or mortgage hereinafter mentioned. This bond is one of a series of six hundred bonds, numbered consecutively from 1 to 600, both inclusive, each for the sum of one thousand dollars, amounting in the aggregate to six hundred thousand dollars, all of like tenor, date and effect, and all equally secured by a trust deed or mortgage bearing even date herewith, duly executed and delivered by the said Bridge Company, and duly recorded in the proper offices in the states of Illinois and Iowa, and conveying to said Central Trust Company of New York, in trust, the bridge of the said Keithsburg Bridge Company, as the same is now, or may hereafter be, constructed across the Mississippi river, from a point in or near Keithsburg, in the state of Illinois, to a point in or near the township of Elliot, in the county of Louisa, in the state of Iowa, together with the approaches thereto on either side of said river, and all lands and real estate which said Bridge Company is or may become entitled to by reason of the construction of the said bridge, with the appurtenances thereto belonging; also, the rents, issues and profits of said bridge, so far as the same are not required to pay the necessary current expenses of maintaining, keeping in repair, and operating the said bridge. And also, all and singular the rights, privileges, corporate property and franchises of said Bridge Company, set forth in said trust deed or mortgage. This bond is entitled to the benefit of a sinking fund as provided by said trust deed or mortgage, whereby the principal of said bond will be redeemed in forty years from the date thereof. Bonds equal in amount to the accumulation of said sinking fund will be redeemed at their par value, annually, commencing after three years from the date hereof. This bond is also subject to allotment for payment and redemption, as provided in said trust deed or mortgage, on any day on which interest is payable thereon. Notice of the numbers of the bonds allotted for redemption will be published in two or more daily newspapers printed in the city of New York, for sixty days, at the expiration of which time the interest thereon shall cease. This bond is further secured by the guaranty of the Central Iowa Railway Company indorsed hereon, of the payment of the principal and interest thereof and of the sums payable into the sinking fund. This bond shall pass by delivery or by transfer on the books of the company in the city of New York, and such other places as said company may designate. After a registration of ownership certified hereon by the secretary of the company or its transfer agent, no transfer, except on the books of the company, shall be valid unless the last transfer shall have been to bearer, the bond to be entitled to successive registrations and transfers to bearer at the option of each holder. This bond is to be valid only when authenticated by the certificate of the trustee indorsed hereon.

IN WITNESS WHEREOF, the said Keithsburg Bridge Company has caused its corporate seal to be hereto affixed, and these presents to be attested by its president and secretary, this first day of June, 1885.

....

Secretary. President.

[Also on the back.]

Guarantee of the Central Iowa Railway Company.—The Central Iowa Railway Company, for value received, hereby guarantees the prompt payment of, and agrees to pay in the city of New York, all the coupons attached to the within bond as they severally become due; and also the sums payable into the sinking fund therein mentioned; and also the principal of this bond at maturity, subject to the right to redeem the same before maturity.

IN WITNESS WHEREOF, the said Railway Company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and secretary, this ...... day of ......, A. D. 19..

....

Secretary. President.

Notice!—No writing on this bond except by an officer of the company.

DATE OF REGISTRY.	IN WHOSE NAME REGISTERED.	TRANSFER AGENT.
....	....	....
....	....	....
....	....	....

[On the end, eighty coupons, numbered on the back, and dated each first day of June and December, from 1885 to 1925, the face of the first one reading:]

Coupon No. 1.—The Keithsburg Bridge Company will pay the bearer Thirty Dollars, at its office or agency in the city of New York, on the first day of December, A. D. 1885, being six months' interest on its First Mortgage Bond No. ...... C. W. OSBORNE, *Treasurer.*

Form 121. Income Gold Bond.

$500 UNITED STATES OF AMERICA. $500

ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY.

FIVE PER CENT. INCOME GOLD BOND.

No............

For value received, The Atchison, Topeka and Santa Fe Railroad

Company promises to pay to bearer, or in case of registration to the registered holder hereof, the sum of Five Hundred Dollars, on the first day of July, one thousand nine hundred and eighty-nine, together with interest thereon when earned at the rate of not exceeding five per centum per annum, payable only out of surplus net earnings, if any, on the first day of September, in the year 1890, and upon the same day in each year hereafter, on the presentation and surrender of the coupons annexed and to be annexed hereto, as they severally mature, both principal and interest being payable in gold coin of the United States of America, of the present standard of weight and fineness, or its equivalent, at the agencies of the said Atchison Company in the cities of Boston or New York, or at the office of Baring Brothers & Company, London, England. The principal of this bond is payable only after the principal and interest of all the general mortgage four per cent. bonds of the Atchison, Topeka and Santa Fe Railroad Company, dated July first, 1889, shall have been previously paid in full. Interest upon the principal sum of this income bond, if any is earned in any year ending June thirtieth, shall be paid upon the first day of September following, at a rate not to exceed five per centum per annum, from and out of the surplus net earnings only of the mortgaged property, provided that in the judgment of the board of directors of the Atchison Company such surplus net earnings shall be sufficient in amount to justify payment of interest on this income bond, and such payment shall be by said board of directors authorized to be so made. Such interest shall not be cumulative, and each successive holder of this income bond accepts the same subject to the agreement that the board of directors of the Atchison Company shall in their absolute discretion determine what are the surplus net earnings, if any, in any year ending June thirtieth, and applicable to such payment of interest, by deducting from the amount of the gross earnings during said year all operating expenses of every kind, and all fixed charges, including rentals of leased lines and other property, interest of all kinds, and taxes of all companies whose stocks are directly or indirectly pledged or mortgaged hereunder, and after providing for and deducting the amount of the interest upon and the sinking fund requirements of all bonds or obligations of the Atchison Company, including the above described general mortgage bonds, and of all bonds or obligations of other companies, the payment of the principal or interest of which has been guaranteed or assumed in whole or in part by the said Atchison Company, and after providing for and deducting the cost of the maintenance, renewals, repairs and improvements of the railroad, telegraph equipment, and appurtenances of the Atchison Company, and of the railroads which at the date hereof or during the life of said income bonds may form a part of the railroad system of the Atchison Company. The Atchison Company may at any time at its pleasure redeem this bond at its face or par value by giving notice of said proposed redemption six months prior to the first day of September in any year by publication once a week for three successive weeks in any newspaper of general circulation published in each of the cities of Boston, New York and London; and interest upon this bond, when so called for redemption, shall cease on and after the first day of September following such publication. All the provisions of the said general mortgage are hereby expressly declared to be part of this bond and of every coupon hereto attached. No recourse shall be had for the payment of the principal or interest of this bond to any stockholder, officer or director of said Atchison Company, either directly or through the said Atchison Company, by virtue of any statute or by the enforcement of any assessment or otherwise. All payments upon this bond of both principal and interest are to be made without deduction for any tax or taxes which said railroad company may be required to pay or to retain therefrom by any present or future laws of the United States of America, or any of the states and territories thereof, said railroad company hereby covenanting and agreeing to pay any and all such tax or taxes. This bond is one of a series of income bonds, coupon and registered, of like tenor and date, the payment of which is secured by a general mortgage or deed of trust, duly executed and delivered by the Atchison, Topeka and Santa Fe Railroad Company, the obligor, to the Union Trust Company of New York, Trustee, bearing date October fifteenth, 1889. This bond shall pass by delivery, or if registered, by transfer upon the transfer books of the company. After registration of ownership, certified hereon by the transfer agent of the company, the coupons shall remain negotiable; but no transfer of this bond, except on the books of the company, shall be valid unless the last transfer is to bearer, which shall restore transferability by delivery, and it shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of each holder; or the holder may, at any time, at his option, surrender this bond and the annexed coupons to the company to be cancelled, and receive in exchange therefor a registered bond of the same issue, and thereafter it shall not be transferable to bearer, but the interest shall be paid to the registered holder. This bond shall be valid only when authenticated by the certificate hereon of the said trustee, or its successors in said trust, that it is one of the income bonds issued under and described in the said indenture of trust or general mortgage.

IN WITNESS WHEREOF, the said Atchison Company has caused its corporate seal to be hereto affixed and these presents to be signed by its comptroller or a deputy comptroller, and attested by an assistant treasurer, on this first day of July, 1889.

ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY,
By .... *Comptroller.*
Attest, ... *Assistant Treasurer.*

[On the back.]

No............ Atchison, Topeka and Santa Fe Railroad Company $500 five per cent. income gold bond. Principal payable July 1, 1989. Interest non-cumulative, payable on the first day of September in each year from the net earnings applicable thereto. Principal and interest payable at the agencies of the company in the cities of Boston or New York, or at the office of Baring Brothers & Co., London, England.

TRUSTEE'S CERTIFICATE.—The Union Trust Company of New York hereby certifies that this bond is one of the series of income bonds issued under and described in the within named indenture of trust or general mortgage to this company as trustee, dated October 15, 1889.

UNION TRUST COMPANY OF NEW YORK, Trustee.
By ...., President.

Notice!—No writing on this bond except by an officer of the company.

DATE OF REGISTRY.	IN WHOSE NAME REGISTERED.	TRANSFER AGENT.
....	....	....
....	....	....
....	....	....

[On the end, one hundred coupons, numbered on the back, and dated each first of September, from 1890 to 1989, the face of the first one reading:]

Coupon No. 1—On the first day of September, 1890, the Atchison, Topeka and Santa Fe Railroad Company will pay to bearer in gold coin of the United States of America, or its equivalent, at its agencies in the cities of Boston or New York, or at the office of Messrs. Baring Brothers and Company, London, England, such portion of its surplus net earnings, if any, not exceeding twenty-five dollars, as shall in accordance with the indenture securing the same be then applicable to the payment of interest on its income bond. If there be no surplus net earnings applicable thereto, this coupon will then become void.—No...... GEORGE L. GOODWIN, *Assistant Treasurer.*

Form 122. Receivers' Certificate of Indebtedness.

[Under date of June 19, 1884, the following order was issued by the Supreme Court of New York: "It is ordered that Horace Russell and Theodore Houston, as receivers heretofore appointed in this action, be and they hereby are authorized, from time to time, to issue and sell, at a price not less than par, certificates not exceeding in the aggregate five million dollars, made by them in the following form, the blanks being filled:

[Here follows the form given below.] It is further ordered, that said receivers be and they hereby are authorized to immediately issue and sell such certificates in such amounts, not exceeding in the aggregate three million dollars, as may seem to them advisable.

And it is further ordered, that said receivers be and they hereby are authorized to use the proceeds of said certificates in their discretion to pay their necessary and current expenses in the performance of the duties of their trust, and sums now due to companies operating connecting lines of railroad upon contracts for the interchange of freight or passenger business, and moneys due for right of way and depot or other grounds necessary for the proper management and operation of said railroad, and moneys due or to become due upon the rolling stock and equipment of said railroad which must necessarily be paid to retain the possession, use and ownership thereof, and all moneys due and owing by the defendant railway company for labor and services rendered in operating said railroad since the first day of March, 1884, and money due for supplies purchased and used by said defendant in carrying on its business, and for rentals, and for terminal, ferry and depot expenses subsequent to that date, whether the same be represented by notes, made by said defendant, or not, and all taxes lawfully imposed upon the property of said defendant, and the proper expenses of said defendant in maintaining its organization and corporate existence. Said receivers, however, are not to pay out for right of way, or depot or other grounds, any sum exceeding in the aggregate the sum of two hundred thousand dollars, nor any sum for rolling stock or other equipment exceeding in the aggregate the sum of four hundred thousand dollars, without the further order of this court.

And it is further ordered, that said receivers be and they are hereby authorized to execute and deliver all necessary lease-warrants in the forms and at the times required by the existing contracts for the purchase of rolling stock and equipment made by said defendant railway company.

And it is further ordered, that the certificates issued pursuant to this order by said receivers shall, until full payment therefor, with interest, be a lien and charge on all the property covered by said mortgage prior to the lien of said mortgage, and that in the final order herein, before the discharge of said receivers, if any of said certificates have not previously been paid by said receivers, provision shall be made for their payment." June 27, 1884, the court made a further order, including the following: "And the said receivers be and they hereby are authorized and directed, until the further order of the court to the contrary, to keep and perform on the part of the said railway company all covenants and agreements in said contracts to be kept and performed by said railway company, exactly the same as said railway company ought to keep and perform the same according to the terms of said contracts if said receivers had not been appointed."]

No............ $............

NEW YORK, WEST SHORE AND BUFFALO RAILWAY COMPANY.

Receivers' Certificate of Indebtedness.

"This is to certify, that the bearer hereof is entitled to receive from Horace Russell and Theodore Houston, and their successors, as receivers of the property of the New York, West Shore and Buffalo Railway Company, covered by the first mortgage to the United States Trust Company of New York, as Trustee, but not personally, the sum of .... dollars, upon the production hereof, and indorsement hereon of such payments, on or before the first day of July, 1887, at the office of said receivers in the city of New York, and interest thereon from the date hereof, at the rate of six per centum per annum, payable on the first days of each January and July, unless said sum and interest thereon, as aforesaid, be sooner paid by the receivers out of the moneys coming into their hands, from time to time, applicable thereto, or the moneys realized by them upon the sale of the mortgaged property in their hands. This certificate is one of a series of certificates, amounting in the aggregate to a sum not to exceed five million dollars, and issued or to be issued under the authority and by virtue of the order of the supreme court of the state of New York, and under the authority and by virtue of the order of the Circuit Court of the United States for the district of New Jersey, in equity, and for the purposes and objects therein mentioned, said orders being made on the .... days of June, 1884, respectively in actions in said courts, wherein United States Trust Company of New York is plaintiff and complainant, and said railway company is defendant. Said certificates to the amount secured thereby are hereby declared to be a debt of the receivers incurred for the benefit and protection of the mortgaged property in their hands, and until full payment thereof, to be a lien and charge thereon prior to the first mortgage and the interest thereon. This certificate is not valid until countersigned by Franklin E. Worcester, treasurer of the receivers.

"In witness whereof, we, as receivers aforesaid, but not personally, have signed this certificate this ...... day of ......, one thousaid eight hundred and eighty-

"..................

"..................

"Receivers of the property covered by the first mortgage of the New York, West Shore and Buffalo Railway Company."

Form 123. Voting Trust Agreement.

Whereas, the undersigned stockholders of the .... Company deem it to their interest that all the stock held by them jointly shall be voted as a unit upon all questions affecting the business and management of the said company, and,

Whereas, ... (naming the trustees) have consented to hold and vote such stock on behalf of the stockholders,

It is Hereby Agreed by and between the above named and undersigned stockholders (hereinafter called "the stockholders") and the above named trustees (hereinafter called "the trustees") that for a valuable consideration the receipt whereof is hereby acknowledged and in further consideration of the mutual covenants and agreements expressed in this instrument:

The stockholders hereby assign, convey and transfer unto the trustees the number of shares of stock of the .... Company, a corporation of the state of .... set opposite their respective names, to be held in trust by the said trustees for the respective stockholders, by whom it is severally assigned, their personal representatives and assigns, upon the following terms and conditions.

I.

The said trustees shall hold, control and vote said stock jointly as if they were collectively the joint owners of all of said stock.

II.

They shall determine by the vote of the majority of the trustees then in office how said stock shall be voted upon any question at any time and every meeting of the stockholders.

III.

All of said stock so held by the trustees shall be voted as a unit as decided by such majority vote of the trustees.

IV.

Any vacancy in the office of trustee as herein provided for, caused by death, resignation or other cause, shall be filled by election by the remaining trustees. And the person so elected shall perform all the duties and exercise all the powers of a trustee as herein provided for.

V.

Said trustees shall prepare and issue to the stockholders certificates showing the amount of stock held on behalf of each stockholder respectively. And the stock so held may be divided and transferred in like manner as if it had not been assigned in trust, subject to the rights and powers of the trustees under this assignment. But no such assignment or transfer of stock shall be effective for any purpose until after surrender of the certificate issued by said trustees and the issue of a new certificate to the purchaser or assignee thereof. The trustees may appoint a transfer agent for the certificates issued by them and prescribe the fees which shall be paid by any holder or owner thereof for the transfer of his certificate.

VI.

Said trustees shall collect and receive all dividends on the stock transferred to and held by them and shall immediately pay over the same to the holders of trust certificates representing such stock as their respective interests appear. The trustees shall not demand or receive any compensation for receiving and paying over such dividends.

VII.

The rights, duties and powers hereby conferred upon said trustees shall expire and wholly cease on the ...... day of ......, 19...., and the trustees shall at said time assign and transfer to the persons who then hold trustees' certificates evidencing their ownership of shares of stock, the amount of stock to which each holder thereof is shown by his trustee's certificate to be entitled.

VIII.

Said trustees hereby accept the trust created by the above and foregoing instrument, and hereby undertake to hold, own and vote said stock as therein provided, and to re-transfer the same on the .... day of ...., to the holders of trustee's certificates, evidencing their right to receive the same. They further undertake at all times to vote the said stock and exercise their powers as trustees in such manner as they shall deem to be for the best interests of the stockholders of the .... Company. They further undertake to accept additional assignments of stock from any and all stockholders of the .... Company and to permit any stockholder thereof to become a subscriber to this agreement.

In witness whereof the subscribing stockholders and trustees respectively have hereunto set their hands and seals this .... day of ...., 19...., and the stockholders have set opposite their names respectively the number of shares of stock which they so assign and transfer to the trustees.

Names of Trustees.	Names of Stockholders.	Number of Shares.
....	....	....
....	....	....
....	....	....

Form 124. Voting Trust Agreement—Another Form.

This agreement made this .... day of ...., A. D. 19...., by and between the undersigned stockholders of the .... Company, a corporation created and existing under the laws of the state ...., hereinafter called "the subscribers," parties of the first part, and ...., of ...., ..., of ...., and ...., of ...., hereinafter called "the trustees," parties of the second part:

Whereas, it is deemed important to the interests of the subscribers to create a trust with the shareholding body as beneficiaries thereof, so that the stock of said company shall not be bought up for speculative control, and to secure safe and prudent management in the interests of the whole number of stockholders; and,

Whereas, a number of the subscribers hereto have purchased the stock of said company upon the distinct agreement and understanding that this voting trust should be created;

Now, therefore, this agreement witnesseth, that in consideration of the premises, and of the benefits to be derived from the mutual observance of the stipulations hereinafter contained, and for other good and valuable considerations from each to the other passing, the receipt whereof are hereby acknowledged, the parties hereto mutually agree upon the covenants hereinafter contained, this agreement, however, not to become operative until the owners of a majority of the shares into which the capital stock of said company is divided, shall in person or by attorney have signed or ratified this agreement and have delivered their certificates of stock as hereinafter specified.

1. The subscribers agree to assign and transfer on the books of the company the trustees and their successors in the administration of this trust, the number of shares of stock owned or held by them in said company and set opposite their respective signatures hereto, and respectively to authorize and empower the said trustees and their successors as aforesaid, as attorneys in fact for said subscribers, to cause said transfer to be made on the books of said company, subject to the trusts and conditions hereinafter declared, and for this purpose to deliver to said trustees and their successors as aforesaid the certificates evidencing the said stock now owned by them respectively.

2. The said shares of stock so transferred shall be held by said trustees and their successors for the common benefit of all the parties to this agreement and all those who may become such, as herein provided, under the terms and conditions hereinafter set forth.

3. As soon as practicable after said transfer of said stock on the books of said company shall have been made, said trustees shall execute and deliver to each of the subscribers hereto, and his assigns, assignable trust certificates for the number of shares set opposite their respective names, which certificates shall be in the following form:

.... Company.

Voting Trust Certificate.

No. .... Shares.

This is to certify that .... and his assigns is entitled to .... shares, of a par value of .... dollars ($........) each of the beneficial interest in the capital stock of the .... Company, certificates for which have been issued to us, as trustees, under and in pursuance of a certain trust agreement made between certain stockholders of said company and ourselves, as trustees, dated the .... day of ...., A. D. 19.....

The holder of this certificate is entitled to the beneficial right and interest provided in and by said trust agreement, including a proportionate share of all dividends declared and paid on the stock of said company held in trust as aforesaid, less his proportionate share of the expenses incident to this trust.

IN WITNESS WHEREOF the said trustees have hereunto set their hands and affixed their seals on the .... day of ...., A. D. 19....

.... (Seal.)
.... (Seal.)
.... (Seal.)

4. The interest in the stock to be assigned to the trustees as herein provided is assignable by transfer upon books to be kept for that purpose by the trustees or their successors as aforesaid, by the holder of said trust certificate or certificates in person, or by written power of attorney to that effect, accompanied by a surrender of said certificate or certificates; and a transferee, by accepting a new certificate in lieu of the one so surrendered, shall be deemed to have assented to the terms and conditions of this agreement.

5. A list of the shares of stock deposited with the trustees as herein provided, as well as a record of all trust certificates issued and transferred, shall be made and kept by said trustees and their successors, which shall contain the names and addresses of said certificate holders, and the number of shares held by each, which said record shall be open to the inspection of any certificate holder demanding the same.

6. The trust hereby created shall vest in the parties of the second part and their successors in office. In case any of the said trustees shall decline to accept or serve, or upon the resignation of any of the said trustees, or whenever any of the said trustees shall part with his beneficial interest in said company, his office shall be deemed to be vacant, and the surviving or remaining trustees shall elect his successor, who shall have and exercise hereunder the same powers and duties as were intrusted to his predecessor in office; it being distinctly understood that such successor shall always hold a beneficial interest in the stock of said company. Nothing in this agreement shall be construed to prevent any one of said trustees from becoming an individual owner of trust certificates as aforesaid, or of voting for himself as an officer or director of said company.

7. Said trustees shall have power to admit to the benefits of this trust, on an equal footing with the original parties thereto, such stockholders in said company as may desire to become parties to this agreement.

8. The trust hereby created shall continue until the .... day of ...., 19...., provided that the holders of a (fill in the fractional interest as desired) interest in the stock held by the trustees as herein provided may at any time terminate this trust at any meeting called for that purpose; written notice thereof hav-

ing been previously mailed to each certificate holder at least ten days prior to the time fixed for such meeting. Upon the termination of said trust, the said trustees shall assign and transfer to the then holders of the trust certificates the amount of stock to which each holder thereof shall be entitled upon the surrender of his trust certificate or certificates.

9. The subscribers hereby constitute and appoint the said parties of the second part, and their successors in office, their, and each of their, true and lawful attorneys and proxies to appear for, represent, and vote for them at all meetings of the stockholders of the said company, which power to vote upon any and all questions which may arise at any such meeting or meetings, including the sale or mortgage of the entire franchise, assets and property of the corporation, or the dissolution of such corporation, as fully and with the same effect as the said subscribers, or any of them, if personally present, could do. And if any difference of opinion should arise among said trustees or their successors as to the proper vote to be cast, then the voice of the majority of said trustees shall govern; and it shall not be necessary for said trustees to assemble together to consider any proposition, nor for all of said trustees to attend all meetings of stockholders, but the wishes of such absent trustee or trustees shall be evidenced by a writing signed by such absent trustee or trustees. And the said trustees and their successors are hereby authorized to designate some one of their number to actually cast the vote which all of said trustees, by reason of their being joint stockholders, shall be entitled to cast.

10. Should any question arise upon which any one of said trustees shall desire the action of the holders of the trust certificates, or upon which the owners of a majority in value of said trust certificates shall desire such action, a meeting for such purpose may be called by the trustees or majority owners desiring same as aforesaid, notice of which shall be given in writing by United States mail, addressed to each of said certificate holders at his last known place of residence, stating specifically the time, place and object of the meeting; such notice to be mailed at least ...... days before the time fixed for holding said meeting. At such meeting the owners of such trust certificates may determine, by a two-thirds vote in value of the certificates so held by them, the manner in which they desire the said trustees to vote; each certificate holder being entitled to one vote, either in person or by proxy, for each share of his beneficial interest in the capital stock of said company. The result of said vote shall be certified to the

said trustees by the secretary of said meeting, and the said trustees shall cast their vote accordingly.

11. The legal title to all stock transferred under or by virtue of this agreement shall remain vested in the said trustees and their successors in trust, and they shall not sell, transfer or assign the same during the continuance of the trust hereby created.

12. The said trustees shall receive all dividends which may be declared from time to time upon the stock held by them as aforesaid, and shall immediately pay out the same to the holders of the trust certificates as their respective interests may from time to time appear.

13. The said trustees shall be indemnified and saved harmless from any and all expenses, costs, damages and other liability arising out of the acceptance of this trust and the issue of the trust certificates as aforesaid, each certificate holder being liable for and agreeing to contribute his proportionate share thereof; and whenever any funds shall come into the hands of said trustees for distribution, they may deduct therefrom a sum sufficient to indemnify them as aforesaid, and divide the balance pro rata among the owners of said trust certificates.

14. In case any certificate holder shall desire to sell the beneficial interest in said company owned by him, or any part thereof, he shall, before offering the same to anyone else, first notify said trustees of the number of shares thereof which he desires to sell, and said trustees shall immediately notify all of the holders of trust certificates, at their last known place of address, respectively, of such contemplated sale; and if the party desiring to sell as aforesaid shall not, within ten days after so notifying said trustees, receive an offer for said certificates satisfactory to him from one of said certificate holders, he may then, and not until then, offer said interest for sale to someone not a party to this trust agreement; provided, that such holder desiring to make sale as aforesaid shall not at any time dispose of any portion of his beneficial interest to any outside person for the same or at a less price than he shall be offered therefor by some party to this agreement.

IN WITNESS WHEREOF the undersigned stockholders as aforesaid have hereunto subscribed their names and affixed their seals, and set opposite each signature the number of shares held or owned by them, respectively, which they desire to have held in trust as aforesaid; and the said trustees, as an evidence of the acceptance of the trust hereby created, have also signed and sealed these presents.

Executed at the city of .... on the .... day of ...., A. D. 19.....

.... (Seal.)	.... Shares.
.... (Seal.)	.... Shares.
.... (Seal.)	.... Shares.
.... (Seal.)	.... Shares.

.... (Seal.)
Trustee.
.... (Seal.)
Trustee.
.... (Seal.)
Trustee.

Form 125. Notice of Stockholders' Annual Meeting.

Office of the .... Company, No. .... Street.
Chicago, Ill., December 31, 19.....

Dear Sir—Notice is hereby given that the annual meeting of the stockholders of the .... Company will be held at the office of the company, No. .... Street, Chicago, Ill., at 12 o'clock m. on Tuesday, January ...., 19...., for the election of directors and the transaction of such other business as may come before the meeting.

The stock transfer books of the company will be closed at 5 p. m. on January ...., 19...., and remain closed until the end of said meeting of stockholders.

John Johnson, Secretary.

Form 126. President's Call of Special Meeting.

Cincinnati, Ohio, September 5, 19.....

John Johnson, Secretary of the .... Company:

Dear Sir—As president of the .... Company, I hereby call a special meeting of its stockholders, to be held on the .... day of September, 19...., at 12 o'clock m., in the office of the company, No. .... Street, Cincinanti, Ohio, for the purpose of considering and acting on a resolution authorizing the issue of $50,000 worth of company bonds, and the execution of a mortgage on the company property to secure them, a copy of which resolution reads as follows: (Here copy the resolution.)

Also for the transaction of any and all business pertaining to the execution of the authority conferred by said resolution.

You will please send the necessary notices to stockholders, calling such a meeting at said time and place.

Robert F. George, President.

Form 127. Secretary's Notice of Stockholders' Special Meeting.

Office of the .... Company, No. .... Street.
Chicago, Ill., September ...., 19....

Notice is hereby given that pursuant to the call of the president a special meeting of the stockholders of the .... Company will be held in the office of the company, No. .... Street, Chicago, Ill., at 2 o'clock p. m. on Tuesday, September ...., 19...., for the purpose of considering and acting on a proposed resolution authorizing the issue of bonds by the company to the amount of $50,000 and the execution of a mortgage on the company's property securing them, a copy of which resolution reads as follows: (Here recite the resolution.)

Also for the transaction of any and all business pertaining to, or necessary in connection with the issue of such bonds and execution of such mortgage.

By order of the president.

John Johnson, Secretary.

Form 128. Stockholders' Meeting—Waiver of Notice.

The undersigned, being all the stockholders of the .... Company, owning respectively the number of shares of stock set opposite our respective names, and being now present at the company's office, do hereby consent to the holding of a meeting of the stockholders of said company on this .... day of September, 19...., at 3 p. m., in the office of the said company, No. .... Street, New York, for the purpose of considering and adopting a resolution authorizing the change of the name of said company to the .... Company, and the transaction of any and all business incident thereto. And we severally waive notice of such meeting, and consent to the consideration and transaction of such business.

Witness our hands this .... day of September, 19....

Names.	Number of Shares Owned.
John Jones	25 shares
William Marks	75 shares
Thomas Smith	100 shares

Form 129. Simple Proxy.

I, the undersigned, do hereby appoint and constitute .... my true and lawful attorney in fact to represent me at any and all meetings of the stockholders of the .... Company [held on or before December ...., 19....],* hereby granting him full power and authority to act for me at such meetings, and in my name and stead to vote the stock in said company belonging to me and standing in my name on the company's books, with like authority and effect as I might do if personally present at any such meeting.

Witness my hand and seal this .... day of ...., 19.....

In presence of .... Signed .... (Seal.)

Form 130. Proxy for a Particular Meeting.

I, the undersigned, do hereby appoint and constitute .... my true and lawful attorney in fact to represent me, and to act in my place and stead at the annual (or special) meeting of the stockholders of the .... Company, to be held in the office of said company on the .... day of ...., 19...., pursuant to a notice heretofore given by the secretary of said company, and at any adjournments thereof, and in my name and on my behalf to vote any and all stock in said company belonging to me and standing in my name on its books, as fully and with like effect as I might do if personally present at such meeting.

Witness my hand and seal this .... day of ...., 19....

In presence of .... Signed .... (Seal.)

Form 131. Proxy for Specific Action.

I, the undersigned, do hereby appoint and constitute .... my true and lawful attorney in fact to attend on my behalf and to represent me at a special meeting of the stockholders of the ...... Company, to be held in the office of said company on the .... day of ......, 19.., pursuant to a notice heretofore given by the secretary of said company, and in my name, place and stead to cast at said meeting any and all votes which I should be entitled to cast as an owner of stock in said company if personally present thereat, in favor of the adoption of a certain resolution for issuing $5,000,000 of corporation bonds and mortgaging the company property to secure the same, which resolution said special meeting has been called to consider. And I hereby ratify and confirm any and all votes cast by my said proxy in favor of the adoption of said resolution.

---

*By omitting the words in brackets the proxy will become unlimited as to time, so as to continue in force until revoked.

In witness whereof, I have hereunto set my hand and seal this .... day of ...., 19.....

In presence of .... Signed .... (Seal.)

Form 132. Oath of Inspectors of Election.

The statute of New York prescribes a form of oath for inspectors at a corporation election which will answer in other states, though more specific than is necessary in some jurisdictions. It is as follows:

State of New York, County of New York, ss:

We, the undersigned, duly appointed to act as inspectors of election at the annual meeting of stockholders of the ...... Company to be held in the office of the company, No. .... street, in the city of New York, on the ...... day of ......, 19.., being severally sworn, depose and say, and each for himself deposes and says, that he will faithfully execute the duties of inspector of election at such meeting with strict impartiality and according to the best of his ability.

John Smith,
James Johnson.

Subscribed and severally sworn to before me this ...... day of ......, 19..

Martin Snow,
Notary Public.

(Notarial Seal.)

Form 133. Inspectors' Certificate of Election.

The undersigned inspectors of election, duly appointed and qualified, do hereby certify that at the regular annual meeting of stockholders of the ...... Company, held at the office of said company, No. .... street, New York, on the ...... day of ......, 19.., a quorum being present, we, after being first duly sworn by oath hereto annexed, did conduct the election for directors of said corporation, and that the vote taken thereat resulted in the election, by the plurality set opposite their respective names, of the following directors to serve for the ensuing year.

NAMES.	VOTES RECEIVED.
John Johnson	125
George Williams	108
Charles Wilson	117

Witness our hands this .... day of ...., 19.....

William Spruce,
John Jacobs.

STATE OF NEW YORK, COUNTY OF NEW YORK, SS:

Before me, a notary public, on this .... day of ...., 19...., personally appeared William Spruce and John Jacobs, to me well known to be persons described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the uses and purposes therein set forth.

Martin Marks,
(Notarial Seal.) Notary Public for County of New York.

Form 134. Notice of Election as Director.

Office of the .... Company, No. .... Street.
Indianapolis, Ind., October ...., 19.....

Mr. James M. Burke, Chicago, Ill.:

Dear Sir—I take pleasure in notifying you that the board of directors of the .... Company, at a special meeting held on September ...., 19...., elected you to membership in said board to fill the vacancy caused by the death of Mr. Williams. Please signify your acceptance of the office at your early convenience, and attend the next regular meeting of the board on October ...., 19...., at 3 p. m., in the office of the company.

Respectfully,
John Johnson, Secretary.

Form 135. Oath of Temporary Directors, Named in the Articles of Incorporation.

STATE OF ...., COUNTY OF ...., SS:

R. O. Barret, J. O. Lane, T. K. Stewart, J. B. Melcher and W. H. Fertich, being sworn, on oath, each for himself and not one for the other, says that he is one of the duly chosen directors of the Union Cereal Company, organized under the laws of the state of ...., with its principal place of business located at ...., ...; that he (is one of the incorporators of and) is a bona fide holder of the amount of stock in said company required by law; that by the articles of incorporation he was selected and designated as one of the directors of said corporation for a period of .... months from the date of its incorporation; that he accepts the trust imposed by said selection, and that during the time for which he is chosen as director and during all the time he continues so to act as director of said corporation he will support and obey the constitution and laws of the United States, the constitution and laws of the state of incorporation, and the charter and by-laws of the said corporation; that he will at all times carry out and perform all duties assigned to him and through said articles of incorporation and the by-laws adopted by said corporation and will at all times, while acting as director, faithfully and impartially transact all the business for said corporation to the best of his ability and for the best interest of the corporation and its stockholders.

(Subscribed and sworn to by each before notary.)

Form 136. Oath of Directors Elected at Stockholders' Meeting.

STATE OF ...., COUNTY OF ...., ss:

R. O. Barret, J. O. Lane, T. K. Stewart, J. B. Melcher and W. H. Fertich, being duly sworn, on oath, each for himself and not one for the other, says he is a duly elected director of the Union Cereal Company, organized under and by virtue of the laws of the state of ...., with its principal place of business located at ....; that he is a bona fide holder of stock therein to the extent required by law; that he was elected a director in said corporation at an annual stockholders' meeting, which had been called and was held in accordance with the laws of the state of .... and the articles of incorporation and by-laws of the said corporation, on the .... day of ...., 19....; that he accepts the trust imposed by said election and that during the time for which he is elected as said director, and during all the time he continues to act as a director of said corporation, he will support and obey the constitution and laws of the United States, the constitution and laws of the state of .... and the articles of incorporation and by-laws, as now in force or as they hereafter may be amended by said corporation; that he will perform all the duties assigned to him by said articles and by-laws and will transact all business of the corporation according to law, faithfully, diligently and impartially, and to the best of his ability for the best interests of the corporation and its stockholders.

(Signatures.)

Subscribed and sworn to before me this .... day of ...., 19.....

................,
Notary Public in and for the state of
........, etc.

Form 137. Oath of Office for President and Other Officers of Corporation.

STATE OF ...., COUNTY OF ...., SS:

I, John O. Lane, being first duly sworn, on oath declare that I am a bona fide stockholder of the Union Cereal Company, and that at a regular (or special) meeting of the board of directors of said corporation, called and held in accordance with the laws of the state of .... and the articles of incorporation and by-laws of the said corporation on the .... day of ...., 19...., I was duly and regularly elected to the office of president (or other office) and that I accept the trust imposed in me by said election; and I promise and swear that during all the time of holding said office I will support and obey the constitution and laws of the United States, the constitution and laws of the state of ...., and the articles of incorporation and by-laws of said corporation, and will at all times faithfully, impartially and diligently perform and carry out the duties of said office to the best of my ability.

John O. Lane.

Subscribed and sworn to before me this .... day of ...., 19.....

................,
Notary Public in and for the state of
........, etc.

Form 138. Notice of Regular Meeting of Directors.

Office of the .... Company, No. .... Street.
New York.

Notice is hereby given that the regular monthly meeting of the board of directors of the .... Company will be held at the office of the company, No. .... Street, New York, at 2 p. m., August ...., 19....

Dated July ...., 19....

John Johnson, Secretary.

Form 139. Notice of Special Meeting of Directors.

Office of the .... Company, No. .... Street.
St. Louis, Mo., August ...., 19.....

Notice is hereby given that, pursuant to the call of the president, there will be a special meeting of the board of directors of the .... Company at 2 p. m., on September ...., 19...., in the office of the company, No. .... Street, St. Louis, Mo., for the purpose of electing a secretary to succeed James Burton, recently deceased, and for the transaction of business pertaining to such election, the entering into a contract with the person so elected and fixing his salary.

By order of the president.

John Johnson, Secretary.

Form 140. Directors' Meeting—Waiver of Notice.

The undersigned, being all of the directors of the .... Company, and being all present, do hereby consent to an immediate meeting of the board of directors of said company, at 2 p. m., on this .... day of September, 19...., in the office of John Jones, No. .... Street, Cincinnati, Ohio, for the transaction of any and all business pertaining to the affairs of the company which may come before such meeting, and we hereby waive notice of such meeting.

Witness our hands this .... day of September, 19....

[Signed by all the directors.]

Form 141. Notice of Dividend.

Notice is hereby given that pursuant to a resolution of the board of directors of the .... Company, adopted July ...., 19...., a semi-annual dividend of three per cent. for the six months ending June ...., 19...., will be paid on July ...., 19...., to the holders of common (or preferred) stock of record at the close of business on July ...., 19..... The stock transfer books will be closed July ...., 19...., at 5 p. m., and remain closed until July ...., 19...., at 10 a. m.

Philadelphia, July ...., 19....

John Johnson, Secretary.

Form 142. Procedure for Issuing Bonds.

Whereas, The action therein provided for is necessary to preserve and advance the best interests of this corporation, and

Whereas, This meeting has been regularly called after due notice for the purpose of considering and adopting or rejecting the following resolutions; be it

Resolved, That a meeting of all the stockholders of the Maine and Washington Railway Company be and the same is hereby called to be held at the main office and principal place of business of said company in room ...... in ...... building, No. .... Street, in the city of ...., on the .... day of November, 19...., at 11 o'clock a. m., for the purpose of considering and acting upon a proposition to issue mortgage bonds of said company to the amount of fifteen million dollars ($15,000,000), payable in gold coin of the United States, for the purpose of paying off and taking up the outstanding bonded indebtedness of said company to the amount of eight million dollars ($8,000,000), paying existing floating indebtedness of said company to the amount of two million dollars ($2,000,000) and providing a fund of five million dollars for use in making improvements, extensions and betterments of and upon the property of said railroad company, and thereby to increase its bonded indebtedness up to the aggregate amount of fifteen million dollars ($15,000,000) in gold coin of the United States, and to secure the payment of said bonds by mortgage upon the railroads, rights of way and certain properties belonging to said company as particularly described in a mortgage heretofore prepared for submission to and consideration by said meeting of stockholders.

Resolved, That the secretary of this company shall cause to be published in the ......, a newspaper of general circulation published in the city of .... [where the meeting is to be held] at least once each week for eight weeks, beginning on the ...... day of ......, instant, a notice to the stockholders of said Maine and Washington Railway Company, stating the time, place and object of holding said meeting, which notice shall be in substantially the following form:

Notice is hereby given that, pursuant to a resolution of the board of directors of the Maine and Washington Railway Company unanimously adopted at a full meeting of the said board, duly called for that purpose and held at the principal office of the company on the ...... day of ......, 19.., a special meeting of all the stockholders of the said Maine and Washington Railway Company will be held at the principal office of said company in room ...... in ...... building at No. .... street in the city of ...., state of ...., on the .... day of November, 19...., at 11 o'clock A. M., for the purpose of considering and acting upon a proposition to issue mortgage bonds of said company to the amount of fifteen million dollars ($15,000,000), for the purpose of taking up outstanding bonds of said company, paying its floating debts, and providing a fund to pay for extensions and betterments of the railroad properties of said company, thereby increasing the bonded indebtedness of said company to the aggregate amount of fifteen million dollars ($15,000,000) and to secure such bonds to be so issued by a mortgage upon the railroads, rights of way and certain properties belonging to said company as described in a mortgage to be submitted to said meeting for its action thereon. By order of the board of directors this ...... day of ......, 19..

(Corporate Seal.) R. M. JONES,

Secretary of the Maine & Washington Railroad Company.

Resolved, That the secretary of this company shall cause a sufficient number of like notices to be prepared in the form of letters or circulars, and shall send by mail, properly stamped and addressed, at least thirty days before the date fixed for said meeting, one such notice to each stockholder whose name appears as such on the company's books, such notice to be addressed to the stockholder at his place of residence, if shown by the books of the company or otherwise known, and if his residence be not known, addressed to him at the principal place of business of the company.

Form 143. Indemnity Bond for Reissue of Lost Stock Certificate.

The undersigned, George Burton and the Fidelity Surety Company, hereby acknowledge ourselves as held and firmly bound unto the Motive Power Company of New York in the sum of ten thousand dollars ($10,000), for the payment of which to the said corporation, its successors and assigns, we jointly and severally bind ourselves, our heirs, executors, administrators and successors.

Signed and sealed by us this ...... day of ......, 19... The condition of the above obligation is as follows:

Whereas, The said George Burton is recorded on the transfer books of said Motive Power Company of New York as the owner of fifty (50) shares of the capital stock of the said company, and

Whereas, His original certificate of stock No. 3, issued by said company, evidencing his ownership of said fifty shares of stock has been lost, stolen or destroyed, as he has complained to said company, and

Whereas, Upon application of the said George Burton and pursuant to a resolution of the board of directors of the said Motive Power Company of New York granting the same, a new certificate for the said fifty shares has been this day issued to said George Burton and numbered 57;

Now, Therefore, If the said George Burton, his heirs, executors and administrators shall now, and at all times hereafter, save, defend, keep harmless and indemnify the said Motive Power Company of New York, its legal representatives, successors and assigns from, against and on account of all demands, claims or causes of action arising out of, upon, or connected with said certificate No. 3, for said fifty shares of stock in said company, or any actual or pretended purchase or assignment thereof, and from all costs, expenses and damages that shall or may arise therefrom, and shall also surrender and deliver up to said company for cancellation the said certificate No. 3, whenever and so soon as it may be found, then this obligation shall be void. Otherwise in full force and effect.

George Burton,
The Fidelity Surety Company.
By M. A. Allen, General Agent.

Signed, sealed and delivered in presence of Arthur R. Morgan, Joseph Harper.

Form 144. Resolution of Consolidation.

Whereas, It is the sense of this board that the consolidation of the A. Company, the B. Company and the C. Company to form a single corporation, and the consolidation and amalgamation of their respective capital stocks, properties and franchises will be mutually advantageous, and

Whereas, The holders of more than three-fourths in value of all the capital stock of each of said companies have consented in writing to a consolidation of the said A. Company, B. Company and C. Company upon the terms following, to wit:

First. That said consolidation shall take place at once, and the consolidated corporation shall continue in existence for fifty years.

Second. That the consolidated corporation shall bear the name of the A. Company.

Third. That the consolidated corporation shall take over and become the owner of all the lands, properties, franchises and assets of every description belonging to each of said constituent companies; shall assume, become liable for, pay and discharge, all valid debts, liabilities and obligations of every kind, character and description, heretofore incurred or entered into by either and all of said constituent companies; shall hold said property and franchises subject to all the valid conditions, liens and claims to which the same were and are subject in the hands of the several constituent companies; and shall assume, undertake and perform all contracts, agreements and undertakings to which any and all of said constituent companies are lawfully bound to the same extent and in like manner as such constituent company or companies are bound to keep and perform the same.

Fourth. That the objects and purposes of the consolidated company shall be made to embrace the objects and purposes of all the three constituent corporations.

Fifth. That the consolidated company shall have a board of directors equal in number to the combined boards of the three constituent companies, and its directors for the first year shall be all the directors of all of said companies.

Sixth. That its principal place of business shall be that of the A. Company.

Seventh. That the capital stock of said consolidated company shall consist of one hundred thousand (100,000) shares of one hundred dollars ($100) each, and shall be issued to shareholders in the constituent companies (upon surrender of their shares of stock therein) in the proportion that such shares held by them respectively shall bear to the combined capital stocks of all the said constituent companies.

Be it resolved, that the propositions and conditions above recited are hereby accepted and adopted by the board of directors of the .... Company.

Form 145. Corporate Seal and Corporate Signatures.

It is almost universally true that a corporation has a seal, and that affixing the seal is an important part of the execution of any formal instrument by the corporation. The distinction between sealed and unsealed instruments having been abolished, in whole or in part, in many jurisdictions, and the law permitting officers and agents of a corporation to bind it by parol contracts and unsealed writings for many purposes, the seal is not so highly esteemed as formerly. But it is still used on formal instruments, such as deeds and mortgages, bonds, stock certificates, etc. And when the secretary gives a formal official certificate, as in certifying to a transcript of the by-laws or minutes, the seal should be affixed with his signature. The seal is usually so mounted as to impress upon paper in raised characters the words and device adopted by the corporation, and prescribed in its by-laws. It is not necessary to use wax or wafers in affixing the seal, though they are often used. The secretary is custodian of the seal by virtue of his office, subject to regulations and restrictions contained in the by-laws. He is held responsible for any misuse of the seal by permitting it to be affixed to instruments the execution of which has not been authorized by the corporation.

Letters and informal documents relating to the corporation business are usually signed with the name of an officer of the corporation followed by his official title, thus, "John Johnson, President," or "George Williams, Secretary Fidelity Trust Co." But when formal contracts are executed the name of the corporation itself should be subscribed and its seal affixed, followed by the signatures of the officers who acted for the corporation in executing the contract. The ordinary form of signature used in such cases is as follows:

(Corporation Seal.) The Fidelity Security Company,
By John Johnson, President.
Attest, George Williams, Secretary.

The corporation will be bound by the signatures of its officers, when they sign on its behalf within the scope of their authority, whether the name of the corporation is made a part of the signature or not. But for the protection of the officers themselves a form of signature using the name of the company and stating that it is affixed by the subscribing officers should be adopted whenever the contract includes a promise to pay money or to do any other act which the officers are capable of performing as individuals. For it is held that where an officer signs his own name to a note or contract which purports to be made by the person signing it, followed by the word "president," or other words indicating his official position in a corporation, he binds himself as an individual, and can not escape liability on the ground that the contract was entered into by and on behalf of his corporation.

Note.—There is no branch of law that is more intricate than the law of corporations. Forms, at best, can only be suggestive. They must be in harmony with the purposes of the incorporators and the rights granted by law. It would be possible to make a large volume of forms for procedure in the organization and management of private corporations without being able to furnish forms wholly applicable in any given instance. The forms given herein are merely illustrative and must be adapted through changes to the uses for which the corporation lawyer or officer intends them.

SPECIMEN FORMS EVIDENCING KINDS OF BUSINESS ASSOCIATION OTHER THAN CORPORATIONS.

Form 146. Partnership Articles of Agreement Between Merchants.

These articles of agreement, made this .... day of ...., 19.., by and between Lewis Miller, of ...., party of the one part, and Abraham Freeman, of ...., party of the other part, for the purpose of forming and defining a copartnership between said parties, witnesseth:

1. That said parties have agreed, and by these presents do

agree, to become copartners together, said copartnership to be known by the firm name of Miller and Freeman, to engage in the business of .... (define the business briefly but accurately so as to keep individual partners from involving the firm in liabilities by dealings outside the proper sphere of the partnership), in the (buying and)* selling of all kinds of goods, wares and merchandise belonging to said business as customarily carried on. The partnership shall commence on the .... day of ...., 19.., and shall continue .... years if both of said parties shall live so long. Nevertheless, the partnership shall terminate at the end of .... years from the date of its commencement if either partner shall desire its termination and shall give notice in writing thereof to the other partner not less than .... months previous to the time for dissolution, or shall leave such notice at the place where said business shall at the time be carried on.

2. The business of the partnership shall be carried on at ......, or at such other place or places as the partners may hereafter determine.

3. The capital of the partnership when formed shall be and consist in the sum of .... dollars, the said Lewis Miller to contribute the sum of .... dollars in cash at the commencement of the partnership and the said Abraham Freeman at the same time to contribute the lease of the store at ...., to be occupied by them and the entire stock of goods and the good will of the business heretofore carried on by him, all of which are estimated by the parties hereto and agreed by them to be valued at the like sum of .... dollars, the capital account so formed to be used and employed in common between the parties for the support and conduct of said business to the mutual profit, benefit and advantage of the parties hereto.

4. At all times during the continuance of their copartnership, the parties hereto agree and each of them agrees to give their attendance on said business and to give their and each of their time and best endeavors to said business, using the utmost of their skill and power for their joint interest, profit, benefit and advantage and to truly employ (buy), sell and deal with their joint stock, and the increase thereof, in the said business, and without engaging in any business outside that herein described and defined.

5. The copartners shall and will at all times during this copartnership bear, pay and discharge equally between them all rents, repairs, alterations, taxes, rates, insurance and other expenses and outgoings whatsoever required, agreed on or desired for

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*Include, if not a commission business.

the support and conduct of said business, and all salaries and wages of persons employed in said business, and all debts become payable on account of said business, and all losses that may occur therein, said discharge of obligations to be paid out of the capital of the partnership and the profits therefrom, or if said capital and profits shall be deficient, then by the partners in equal shares.

6. There shall be secured and kept all during the continuance of the partnership true, just and correct books of account, wherein said partners and each of said partners shall enter and set down, or cause to be entered and set down, all money by them or either of them received, paid, laid out and expended in or in connection with said business, records of all sales, purchases, receipts, payments, engagements, transactions and property of said business and all other matters and things whatsoever pertaining to the property and accounts of said business and the management thereof, which said books shall be kept in the place or places of business of said copartnership and shall be used in common between said partners so that either may have access thereto or make copy thereof without interruption or hindrance from the other.

7. On the .... day of ...., in the year and on the ...... day of .... in every succeeding year, or oftener, if necessary, the partners shall make and take a true, just and correct general account and inventory of the business and all profits and increase by them or either of them made, and all losses by them or either of them sustained and all transactions, payments, disbursements, receipts and all other things by them made, disposed of, received, acted, done or suffered, during the preceding year, and of all capital, property, resources, engagements and liabilities for the time being of the partnership; and the said general account shall be written in two books immediately after said account shall be made and shall be signed in each book by both partners, and after such signature each partner shall keep one of the said books and shall be bound by every such account, except that, if any manifest error be found therein by either partner and signified to the other partner within .... months after the account is signed by them, then such error shall be rectified. After said general account is made, the partners shall be entitled to the net profits remaining from said business in equal shares after the payments herein permitted to be made therefrom are deducted. If the said account shall show further expenses and losses so there are no net profits, then each shall bear and pay his just share of the expenses and losses so appearing.

In each year it shall be lawful and proper for each partner to take out of the net profits of said business, by equal monthly payments, the sum of .... dollars for his separate use, but in the event that at the end of any year it shall appear from the general annual account that the net profits of such year shall not have amounted to the total yearly amount of the allowances to both partners, then immediately after such general account shall have been made each partner shall repay to the partnership the excess, if any, of the amount of the sum which he actually shall have received in such monthly payments over the sum which he shall have been entitled to receive as his share of the net profits of said business. Neither of said partners shall take currently for his separate use any further amount than the monthly allowance without the consent in writing of the other partner.

8. The said parties mutually covenant and agree with each other that during the continuance of this partnership neither of them shall or will, without the previous consent in writing of the other, indorse any note, enter into any bond, or become bail or surety or otherwise secure any person, persons, firms, corporations or associations whatsoever, or willingly suffer to be done anything whereby the capital, property or assets of the partnership may be attached or taken in execution. Each partner shall pay his separate debts punctually and shall indemnify the other partner and the capital property and assets of the partnership against the same and all expenses on account thereof.

9. If either partner shall buy any goods or articles exceeding the value of .... dollars without the previous consent in writing of the other, such other partner shall have the option either to take such goods or articles on account of the partnership, or to let the same remain the separate property of the partner who shall have so bought the same.

10. Within .... months after the expiration of the partnership, otherwise than by the death of either partner, a general account shall be taken by the partners of all the capital, property, engagements and liabilities of the partnership; and immediately after such last mentioned account shall have been so taken and settled, the partners shall forthwith make due provision for the payment of the debts and meeting all other liabilities of the partnership, and subject thereto, all the property of the partnership shall be divided between the partners in equal shares; and such instruments in writing shall be executed by the partners respectively for facilitating the getting in of the debts due to the partnership, and for vesting the whole right in the said respective shares of the property in the partner to whom the same respectively shall upon such division belong, and for releasing to each

other all claims on account of the partnership, and otherwise, as are usual in cases of the like nature.

(Here add any other special stipulations which may be desired.)

In witness whereof, the parties hereto have hereunto interchangeably set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of (signatures and seals).

(Signature of witness.)

Form 147. Articles of the Pierce Fordyce Oil Association—A Joint-Stock Association.

Articles of Copartnership.

Name.

We, whose names are hereto subscribed, do hereby form a Copartnership Association, to be known and styled

PIERCE FORDYCE OIL ASSOCIATION,

which shall continue in existence until the 2d day of April, 1960, unless sooner dissolved as herein provided.

Purposes.

The general purpose of said Copartnership Association is: To engage in the general merchandise of petroleum and the products thereof and other such articles as may be advantageously sold or handled in connection therewith; to purchase, own and mine lands supposed to contain or containing oils or other minerals and to construct and operate refineries or other manufacturing plants for refining or reducing such oils or minerals and to engage in any other industrial, manufacturing, mining or merchandising enterprise or exploitation that may be determined by the board of managers appointed or chosen as hereinafter provided.

Capital.

The capital is three million dollars, divided into thirty thousand shares of one hundred dollars each, all of which has been paid in, by the subscribers hereto. The capital may be increased from time to time by increasing the number of shares and the admission of new members, as may be determined by a vote of the majority of the then shares at any meeting of the shareholders called pursuant to these articles of association or such by-laws as may be adopted hereafter by a majority of the shares.

SHARES.

The certificates of membership shall be issued by the president of the board of managers and countersigned by the secretary of said board and shall be substantially the following form, viz.:

PIERCE FORDYCE OIL ASSOCIATION.

(Copartnership.)

Capital, $3,000,000, or thirty thousand shares.

Member's Certificate of Interest.

This is to certify that .... is the owner of .... full paid shares of beneficial interest in the Pierce Fordyce Oil Association, transferable on the books of the association by the owner thereof in person or by duly authorized attorney upon surrender of this certificate properly indorsed.

This certificate of interest is subject to the provisions and covenants contained in the articles of copartnership of the Pierce Fordyce Oil Association, dated the 2d day of April, 1910, and any amendment thereto and the by-laws of said association and the provisions hereof. No member of said association or owner or holder of this certificate shall have any authority, power or right whatsoever to do or transact any business whatever for, on behalf of or binding on the association or any member thereof, and no member of this association shall be liable for any debts, covenants, demands or torts of this association beyond the amount of his shares.

This certificate shall be the sole and only evidence of membership in said association and shall be surrendered upon the call of the board of governors at any time to the association upon the payment or tender of payment to the amount of its face or par value and a premium of fifteen per cent. thereof.

IN WITNESS WHEREOF, the said association has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the association this .... day of ...., 19....

................, ...,

Secretary. President.

DEATH OF MEMBER.

The decease or insolvency of a member of the association shall not work a dissolution of it or have any effect upon the same, its operation or mode of business; nor shall it entitle his legal representatives or heirs or assigns, voluntary or involuntary, to any account or to take any action in law or equity or otherwise against the association, its members, officers, board of governors, trustees or its property or assets; but they shall simply and only succeed to the right of the deceased, to the certificate of membership and the shares it represents, subject to this agreement, the amendments thereto and the by-laws of the association, now or hereafter adopted.

BOARD OF GOVERNORS,

The entire affairs of this association shall be managed by a board of governors, consisting of seven members, each of whom shall own at least a certificate or certificates for not less than ten shares, who shall be elected by a majority of shares held by members at a regular annual meeting of the certificate holders every two years after the expiration of the term of the first board of governors.

The first board of governors shall be composed of the following named persons, viz.: H. C. Pierce, Samuel W. Fordyce, Samuel W. Fordyce, Jr., George T. Priest, Robert E. Moloney, Henry W. Allen, and John H. Holliday, who shall continue for the period of five years next ensuing the date of this agreement.

Each board shall elect its own president, vice-president, secretary and treasurer and may create such other offices, filling them by appointments and prescribing the duties appertaining thereto as they may deem wise, necessary or convenient to carry on the business of the association and may likewise fill any vacancy in its membership occasioned by death or resignation until the next election of a board of governors. The board may also fix the salaries of all officers, including its own members, and may remove any officer and fill all vacancies which may occur in any office.

The first board of governors shall appoint such a number of its members as it may deem proper, not exceeding three, as trustees, in whose name or names all investments and title to all property are to be made and held under a declaration of trust for and on behalf of this association.

The board of governors shall be held to be trustees for and on behalf of this association, and may in that capacity sue and be sued in any court of law or equity.

The board of governors shall have full power and authority in the conduct of the business of the association to borrow money and issue mortgage debentures therefor if deemed advisable, and any debt for money so borrowed or liability created shall be and remain until paid a lien upon all funds, moneys and properties there or thereafter belonging to or held in trust for this association in preference to the claims or claim of any shareholders as such.

(1) The board of governors shall have no power to bind the shareholders or members personally; and in every written contract or undertaking they shall enter into relating to the business of this association, its property or any part thereof, reference shall be made to this agreement; and the person, firm or corporation so contracting with the board of governors shall look only to the funds and property, legal and equitable, of this association for the payment of any debt, damage, judgment or decree or of any money that may become due and payable in any way by reason of the contract or undertaking; and neither the board of governors nor the shareholders or members present or future shall be personally liable therefor or for any debt incurred or engagement or contract made by said board of governors.

(2) The board of governors may fix and regulate their own time and place of meeting and a majority thereof shall constitute a quorum and possess and exercise all the powers of a full board.

(3) The board of governors shall, whenever they may be so minded, convene all of the registered share or certificate holders in general meeting without specifying the purpose thereof upon notice to that effect deposited in the post office at the place of the general offices of the association addressed to each shareholder at his registered post office address, ten days before the date of the proposed meeting; and the majority of the shares present or represented at any such meeting so called, shall have and exercise the right, power and authority of the entire body of share or certificate holders.

(4) The share or certificate holders shall meet annually on the second Tuesday of each year without further notice to consider the affairs of the association and transact such business as may then be inaugurated by them or that may be submitted for their consideration by the board of governors. At each meeting of the share or certificate holders, each member present or represented by duly accredited agent or attorney shall be entitled to cast as

many votes upon any proposition as he may have shares of membership interest.

(5) At any meeting of members, by-laws may be passed or amended by a majority of those present or represented; and any amendment may be made to this agreement by a vote of three-fourths of those present or represented.

(6) The board of governors may from time to time declare and pay such dividends from the earnings of the association as they deem expedient.

Officers and their Duties.

President and Vice-President.

The president, or in his absence the vice-president, shall sign all certificates of membership, preside at all meetings of the members of the board of governors and shall do and perform and render such acts and services as the board of governors shall prescribe and require and shall receive such compensation for services as may from time to time be fixed upon by the board of governors.

Secretary.

The secretary shall countersign all certificates of membership and shall keep such minutes, records and books as the board of governors may require, attend all meetings of the board of governors and render such services as may be imposed upon him.

Treasurer.

The treasurer shall perform such duties as the board of governors may impose upon him.

Title Trustees.

The members of the board of governors appointed to hold the title to all property of the association shall at all times be subject to the orders of the board of governors who may any time and for any cause remove any or all of them from office and appoint and devolve upon other members of the board of governors the duties and functions of the office. In the case of the death, resignation or other disability of any such trustee, the board of governors may fill the vacancy caused thereby.

DISSOLUTION.

This association shall continue for a period of fifty years from the date of the execution hereof unless sooner dissolved by the vote of the majority of membership certificates or shares.

IN WITNESS WHEREOF, we have hereunto set our respective signatures and attached our several seals this the ... day of April, 19..

Henry C. Pierce, (Seal).
S. W. Fordyce, (Seal).
Samuel W. Fordyce, Jr., (Seal).
George T. Priest, (Seal).
Robt. E. Moloney, (Seal).
Henry W. Allen, (Seal).
John H. Holliday, (Seal).

UNINCORPORATED ASSOCIATIONS.*

Owing to popular ignorance of the actual status and usefulness of corporations, and to the general use by the press of the name corporation in an invidious way in connection with large businesses, particularly with reference to those which have been wrongly conducted, the corporate form has been so subjected to ill-advised regulation and taxation that its efficiency in some jurisdictions has been largely neutralized by the adverse conditions under which it must exist. In some states, particularly in Massachusetts, a comparatively new form of business conduct, that of the unincorporated association, is being developed. These associations are organized under the terms of extensive trust deeds in which is incorporated many of the most desirable features of corporations, but which have a different standing in the law. Though the basic law on which these associations are formed is old, the active and more extensive use of this form is bringing up constantly new questions, so that its development for this specialized purpose is only beginning. Most courts have held heretofore, with a few exceptions as to joint stock associations, that there is no intermediate position for a business enterprise between the partnership and the corporation. There seems to be a tendency now on their part toward recognizing and establishing such an intermediate organization in the unincorporated association. Able lawyers have done much to mark out a line of distinction and to draw such papers as will give this form the advantages it seeks while relieving it from legal restrictions which would hinder its growth. These trusts are limited in duration to the period permitted by the Rule against Perpetuities, so as not to be illegal as restraint upon alienation. A form recommended is that limiting the trust to twenty years from the death of the last survivor of the trustees named "and such other persons now living as shall hereafter become trustees of these presents before any person or persons not now living shall have become the only trustee or trustees thereof or the offices of trustees thereof shall have become entirely vacant whichever of the said periods shall first expire and at the expiration of the time so limited the said trusts shall terminate." The formal association for profit is created, says Wrightington, "by a declaration of trust by two or more individual trustees reciting that they are to acquire certain property, usually either real estate or corporate securities, and will hold it upon certain terms. The management of the trust estate is vested usually in the trustees, but sometimes in a separate board of directors. It is usually provided that the trustees shall be self-perpetuating, but if they are also the managers, the shareholders frequently have power to elect or remove them. Subscribers to the trust fund receive transferable certificates for stock resembling as closely as possible corporate stock. There is provision for meetings and certain powers of the shareholders may be exercised by vote. It is the unlimited liability of partners for the debts of the concern that has made the ordinary partnership an unsatisfactory method of organization for modern business and an impossibility in dealing with large aggregations of capital of many investors. Recognizing the danger that the courts might hold them partnerships even in the face of their express declaration to the contrary, these trust instruments have developed ingenious methods for eliminating this personal liability of shareholders." Wrightington then quotes as an example the following from the deed of a real estate trust owning a large office building in Boston: "The shareholders hereunder shall not be liable for any assessment and the trustees shall have no power to bind the shareholders personally. In every written order, contract or obligation, which the trustees shall authorize or enter into, it shall be their duty to stipulate or cause to be stipulated that neither the trustees nor shareholders shall be held to any personal liability under or by reason of such order, contract or obligation, and to refer or cause reference to be made to this agreement.

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*See The Law of Unincorporated Associations, by Sydney R. Wrightington.

"Every act done, power exercised, or obligation assumed by the trustees personally under the provisions of this instrument, or in carrying out the trusts herein contained, shall be held to be done, exercised or assumed, as the case may be, by them as trustees and not as individuals, and every person or corporation contracting with the trustees, as well as beneficiary hereunder, shall look only to the funds and property of the trust for payment under such contract or for the payment of any debt, mortgage, judgment or decree, or the payment of any money that may otherwise become due or payable on account of the trusts herein provided for or any other obligation arising under this agreement in whole or in part and neither the trustees nor the shareholders, present or future, shall be personally liable therefor.

"No bond or surety or sureties shall ever be required of any trustee acting hereunder, and each trustee shall be liable only for his own acts, and then only for wilful breach of trust."

These associations are considered to have the greatest possibilities since they are independent of legislative authorization. They have evolved from the ordinary trust created by will or *inter vivos* for the benefit of a class. The distinction between partnerships and pure trusts comprehends two elements in the partnership which are lacking in the trusts, that is, the element of association and the right on the part of the beneficiaries to direct and control the management of the funds by trustees. It is apparent then that in unincorporated associations for profit the trustees and not their beneficiaries are the proprietors of their property and business enterprises. The power to change trustees at given intervals and to fill vacancies as they occur should not be deemed sufficient to transfer that proprietorship to the shareholders.

It must be stated that the unincorporated association has not yet been so clearly distinguished in law that it is an entirely safe instrument for use in those states where its principal features have not been separated and adjudicated so as to relieve those interested in it from doubt as to their status and also from likelihood of expensive litigation to determine their status.

Form 148. Unincorporated Association Agreement of an Industrial Company.

AGREEMENT AND DECLARATION OF TRUST

NORTH AMERICAN COMPANIES.

Agreement made at Boston, in the Commonwealth of Massachusetts, and dated May 5, 1915, by and between D., T. and C., parties of the first part; W., residing at B., Massachusetts, and H., residing at S., Massachusetts (who and their successors are hereinafter collectively called the trustees), parties of the second part, and the holders from time to time of certificates for preferred and common shares herein provided for (hereinafter called the shareholders), parties of the third part.

Whereas, the parties of the first part have entered into an agreement in writing (hereinafter called the preliminary agreement), dated May 4, 1915, agreeing, among other things, respectively, to sell, assign, transfer and deliver unto the trustees the shares of stock by the terms hereof sold, assigned, transferred and delivered unto the trustees upon receiving from the trustees shares issued hereunder to the aggregate amount of $935,300 in amount or par value of preferred shares and 558,000 common shares without nominal or par value and upon the execution and delivery by the trustees of the agreements therein referred to. Said preliminary agreement is on file with the trustees and this agreement and declaration of trust is expressly made in pursuance thereof subject to all the terms thereof and the shareholders hereby and by their acceptance of shares hereunder expressly assent to all the terms thereof.

Now therefore this agreement witnesseth:

1. The said D. has sold, assigned, transferred and delivered, and by these presents does sell, assign, transfer and deliver unto the trustees and their successors and assigns 27,853 shares of the common capital stock of the C. Company, a corporation organized and existing under the laws of the Province of Quebec, Dominion of Canada, and agrees that he will sell, assign, transfer and deliver unto the trustees any and all additional shares of the capital stock of the said company which may at any time hereafter be acquired by him upon receiving for each such additional share one preferred share issued hereunder and the trustees agree to accept upon the said terms such additional shares as he may deliver to them up to the amount of stock in the C. Company now outstanding. The said T. has sold, assigned, transferred and delivered, and by these presents does sell, assign, transfer and deliver unto the trustees and their successors and assigns thirty-six thousand (36,-000) shares of the capital stock of the S. Company, a corporation organized and existing under the laws of the state of New York. The said C. has sold, assigned, transferred and delivered, and by these presents does sell, assign, transfer and deliver unto the trustees and their successors and assigns (2,500) shares of the preferred capital stock and (3,000) shares of the common capital stock of T. Company, a corporation organized and existing under the laws of the state of New York, and agrees that he will sell, assign, transfer and deliver unto the trustees all additional common and preferred shares of the capital stock of the said company which may at any time hereafter be acquired by him upon receiving for each such additional share of preferred stock one preferred share issued hereunder and for each such additional share of common stock one common share issued hereunder and the trustees agree to accept upon the said terms such additional shares as he may deliver to them up to the amount of stock in the T. Company now outstanding.

2. In consideration of the aforesaid assignments and agreements the trustees (as trustees and not individuals) will forthwith issue and deliver to the parties of the first part $935,300 in amount or par value of the preferred shares and 558,000 of the common shares herein provided to be issued by them, and will forthwith execute and deliver a contract with S. Securities Corporation for the ac-

quisition of four thousand (4,000) additional shares of S. Company and will forthwith enter into an agreement for the sale to the syndicate formed as set forth in the preliminary agreement of two hundred and twenty thousand (220,000) common shares to be issued hereunder, and forthwith execute and deliver an option agreement for the issue of two hundred and twenty thousand (220,000) additional common shares hereunder, all as provided for in the preliminary agreement.

3. The trustees hereby declare and agree that they will hold all the said shares of stock acquired and to be acquired by them and all other property which they may acquire as such trustees (hereinafter called the trust estate) in trust, to hold and manage the same for the benefit of the shareholders for the time being, according to the number and class of shares issued and held by them respectively and with and subject to the powers and provisions hereinafter set forth concerning the same.

The Trustees.

4. The trustees shall hold the legal title to the trust estate and in addition to the other rights, privileges, authority and power vested in them by law and hereby conferred upon them, they shall have power subject to the limitations and conditions of these presents;

(a) To manage and control the trust estate;

(b) To transfer and to sell, lease, dispose of or otherwise turn to account all or any part of the trust estate to any corporation, person or persons upon such terms as the trustees may determine except that the trustee shall not except upon the termination of the trust hereby created in the manner hereinafter provided sell or dispose of any shares of the C. Company nor any shares of the S. Company nor any shares of the T. Company, nor any shares of any corporation of whose capital stock the greater part is or shall be held by the trustees without the assent by vote of the holders of a majority of the outstanding shares issued hereunder given at a regular annual meeting or at a special meeting called for the purpose of considering the sale or disposition of such shares;

(c) To acquire any real or personal property, rights, franchises or privileges which they may think suitable or convenient for any purposes of the undertaking;

(d) To vote in person or by proxy at any and all meetings, general or special, of stockholders or holders of other securities upon all shares of stock or other securities held hereunder and on any and all matters coming before said meetings, including the right to vote in favor of the creation of any mortgage lien or other encumbrance upon any of the property, real or personal, of any or all of the corporations, any of whose shares of stock may at the time be comprised in the trust estate, and the right to vote in favor of consolidating or merging any of the corporations any of whose shares of stock may be comprised in the trust estate with any other such corporation or with any other corporation, and the right to vote in favor of the sale or lease of the physical property, real or personal, or any part thereof of any such corporation to any other corporation whatsoever now existing or hereafter created or to any voluntary association or trustees or persons having lawful power to acquire or to become lessees of such property, and the right to vote in favor of or to consent to any proposition, resolution or motion to amend, alter, repeal or modify any of the provisions of the articles of association, certificate of incorporation, charter and by-laws of any corporation, any of whose shares of stock may be comprised in the trust estate, provided, however, that neither the right hereunder to vote in favor of the creation of any such mortgage lien or other encumbrance, nor the right to vote in favor of any such consolidating or merging, nor the right to vote in favor of any such sale or lease, nor the right to vote in favor of or to consent to any such proposition, resolution or motion to amend, alter, repeal or modify any of the provisions of the articles of association, certificate of incorporation, charter or by-laws of any corporation any of whose shares of stock may be comprised in the trust estate shall be exercised without the assent by vote of the holders of a majority of the outstanding shares issued hereunder given at a meeting of the shareholders and in case of any such consolidation, merger or sale to accept and receive in payment or in exchange for the interest of the trust estate in the premises howsoever represented the evidences of debt, bonds, notes, shares of stock, participation shares, trust certificates, certificates of interest or other security made or issued by one or more corporations, voluntary associations, trustees or persons as the trustees may in their absolute and uncontrolled discretion deem to be proper;

(e) To transfer to any person or persons any share or shares of stock in any corporation that may at the time constitute a part of the trust estate, and to allow any such share or shares of stock to stand in the name or names of such persons as long as the trustees shall think proper for the purpose of qualifying such person or persons as a director or directors or other officer of such corporation or otherwise for the purpose of maintaining the organization of such corporation, or for any other purpose deemed expedient by the trustees;

(f) To cause any shares, bonds or securities at the time forming any part of the trust estate to be transferred into the names of or vested in the trustees or any of them jointly with the right of survivorship or in any one of them in such manner as not to give notice that they are trustees thereof or that the same are affected by any trust, or to allow or cause such shares, bonds or securities to remain in or to be transferred to the name or names of any other person, firm or corporation and to entrust to any bank or trust company or safe deposit company for safe keeping any or all of the certificates of stock, bonds, securities, claims and all documents and papers comprised in or relating to the trust estate;

(g) To sell or exchange subject to the limitations in (b) above on such terms and for such considerations, whether cash or other securities, as they may see fit, bonds, securities and other claims held by them of or against any corporation, for such bonds, notes, shares of stock, participation shares, trust certificates, certificates of interest or other securities made or issued by one or more corporations, voluntary associations, trustees or persons as the trustees may in their absolute and uncontrolled discretion deem to be proper;

(h) To settle all accounts, and to compound, compromise, abandon or adjust by arbitration or otherwise any suits, actions, proceedings, disputes, claims, demands and things relating to the trust estate, and to transfer to and deposit with any incorporated trust company or other persons any shares or securities forming part of the trust estate for the purposes of any arrangement for enforcing or protecting the interests of the trustees or the owners of such shares or securities and to give time with or without security for the payment or delivery of any debts or property claimed in favor of the trust estate, and to pay or satisfy any debts or claims upon any evidence that the trustees may deem sufficient;

(i) To lend any money forming part of the trust estate from time to time on such terms and conditions and with or without security to any of the corporations of whose capital stock the greater part is or shall be held by the trustees or to such persons or other corporations as the trustees may approve, and to sell or otherwise dispose of and to pledge or hypothecate any bonds, notes or other evidences of indebtedness given for or on account of any such loans and to pay, liquidate, settle or discharge any debts, claims or demands of any sort now or hereafter existing against any corporation of whose capital stock the greater part is or shall be held by the trustees;

(j) To invest or deal with the moneys forming part of the trust estate upon such securities or in such manner as they may from time to time determine in the same manner and to the same extent as if they were not trustees, but were making such investments as natural persons and without any limitation in respect of the character of the securities invested in, and to sell or otherwise dispose of any of such investments and reinvest the proceeds thereof, or any part thereof, with continuing power so to invest and reinvest during the existence of the trust hereby created;

(k) By unanimous action of the trustees to raise or secure the payment of money from time to time for the purposes of the said trusts and to issue evidences thereof, and for such purpose to mortgage, pledge or otherwise encumber the whole or any part of the trust estate all upon such terms and conditions and for such purposes and in such manner as they may determine;

(l) To deposit any moneys, included in or derived from the trust estate, in any bank or trust company, and from time to time to provide for the disbursement thereof;

(m) To pay any and all taxes or liens of whatsoever nature or kind imposed upon or against the trust estate, or any part thereof, out of any funds available for such purpose;

(n) To buy or join with any person or persons in buying the property of any corporation, any of the securities of which are included in the trust estate, or any property in which the trustees as such shall have or may hereafter acquire an interest and to allow the title to any property so bought to be taken in the name or names of and to be held by such person or persons as the trustees shall name or approve and so that all real estate so acquired and in whatsoever name held shall be held upon trust for sale and conversion into personal estate at such time or times and in such manner and upon such terms as they shall think fit, but all such real estate shall at all times during any postponement of the sale and conversion thereof be considered as personal estate;

(o) To enter into any and all contracts, guaranties, obligations and other instruments which in the opinion of the trustees may be necessary or expedient to carry out, promote, protect and conserve the trust hereby created and the interests of the shareholders, including the making of guaranties to secure the performance of contracts and obligations of other parties;

(p) Generally in all matters, to deal with the trust estate and to manage and conduct the affairs thereof as fully as if the trustees were the absolute owners of the trust estate, and to execute and make and do all such agreements, deeds, instruments and things as the trustees may deem proper for any of the said purposes;

(q) At any time and from time to time to vest in and delegate to an executive committee any powers and authorities conferred upon the trustees by these presents and to alter, modify or revoke any such grant or delegation at discretion.

5. The trustees shall not have any power or authority to borrow money on the credit or on behalf of the shareholders or to make any contract on their behalf for repayment of any money raised by mortgage, pledge or charge in pursuance of the provisions hereof or to make any contract or incur any liability whatever on behalf of the shareholders or binding them personally.

6. The management of the property and affairs of the trust estate may be carried on by the trustees under the name of the North American Companies and the trusts hereby created and the trustees in their collective capacity may also be designated as the North American Companies. In all written contracts and obligations it shall be the duty of the trustees or other officers or agents especially to stipulate that neither the shareholders nor the trustees nor any officers of the trust shall be held to any personal liability under or by reason of the same.

7. The trustees may appoint a president, one or more vice-presidents, a secretary, a treasurer and such other officers and agents as they shall think proper for the management of the property and affairs of the trust estate and assign to them from time to time such duties as they shall think fit without being answerable for the acts or defaults of such officers or agents. The trustees may delegate any of their powers to an executive committee, but such committee shall, in the exercise of any power so delegated, conform to any regulations that may from time to time be imposed by the trustees. None of the said officers or agents or members of the executive committee need be trustees. The trustees may fix and pay out of the trust estate the compensation of the officers, agents and members of the executive committee appointed by them, and if any trustee shall act as an officer, agent or member of the executive committee he may receive compensation for so acting in addition to that received by him as trustee.

8. The trustees may act with or without a meeting, and the action of a majority of the trustees except as provided in (k) above shall be valid and binding. Any trustee may appoint any other trustee as his proxy to act for him at any meeting and may empower any other trustee to act on his behalf and to use his name for execution or signature of documents for the purposes of these presents without being responsible for loss.

9. Out of the income from the trust estate the trustees may make distributions under the name of dividends or otherwise

among the shareholders as hereinafter provided at such times as the trustees may fix, and the shareholders shall have no right to any distributions except when and as declared by the trustees.

10. The trustees shall be entitled to remuneration, the amount of which shall from time to time be fixed by vote of the shareholders, and shall be paid out of the trust estate.

11. The trustees shall pay out of the trust estate the expenses of the preparation of this agreement and the formation of the trust hereby created and the agreements pursuant to which this agreement and declaration of trust is executed as referred to herein and of printing and engraving or lithographing the certificates for shares to be issued hereunder and other expenses of like nature in connection with the formation of the trust hereby created.

12. Every trustee may purchase or acquire shares in all respects as if he were not a trustee. No trustee shall be disqualified by his office from contracting with the trustees either as vendor, purchaser or otherwise, nor shall any such contract or arrangement in which any trustee shall be in any way interested be avoided, nor shall any trustee so contracting or being so interested be liable to account for the profit realized by any such contract or arrangement by reason of such trustee holding office or of the fiduciary relation thereby established, but the nature of his interest must be disclosed by him to the other trustees before the contract or arrangement is determined on if his interest then exists and no trustee shall vote in respect of any contract or arrangement in which he is interested as aforesaid, but this prohibition shall not apply to any resolution to give the trustees or any of them any remuneration or security by way of indemnity, and it may at any time or times be suspended or relaxed to any extent by vote of the shareholders.

13. Except in the case of death, resignation or disability the trustees to whom the trust estate is granted by these presents shall continue to be trustees hereof until the first annual meeting of the shareholders, at which time an equal number of trustees, or in the event that such number shall have been increased by the trustees or shall be increased by the shareholders, then such increased number shall be elected by the shareholders. The trustees may at any time and from time to time until the first annual meeting of the shareholders increase the number of trustees hereunder, but not to a number exceeding nine (9), and may fill any vacancy caused by such increase, and the shareholders may at any annual meeting fix the number of trustees hereunder, but such number shall not be less than three (3) and shall not exceed nine (9). The trustees elected at any annual meeting shall hold office

until the next annual meeting thereafter and until their successors have been elected and have agreed to act. Failure to hold an annual meeting or elect trustees shall not cause any vacancy among the trustees or in any way affect the trust hereby created. The trustees shall have power at any time or times to accept the resignation of any trustee and fill any vacancy caused by resignation or otherwise.

14. Any trustee may retire by presenting his resignation in writing to some one or more of the trustees, but such resignation shall be effectual and complete only upon the appointment of a new trustee in his place or the previous acceptance of his resignation by the remaining trustees or upon the expiration of six calendar months after such resignation, and meanwhile he shall continue to act as such trustee.

15. Upon the resignation of any trustee and upon every appointment of a new trustee, such instruments shall be executed as shall be necessary or convenient for vesting the trust estate in the trustees for the time being or providing evidence of such vesting independently of such resignation or appointment, all of which instruments the trustees for the time being are hereby authorized to execute. The trustees for the time being may exercise all the powers, authorities and discretions hereby given to the trustees, notwithstanding any vacancy among the trustees.

16. The receipts of the trustees or either of them or any of them or of the treasurer or other officer or agent thereunto authorized by the trustees for money or things paid or delivered to them or him shall be an effectual discharge to the persons paying or delivering the same therefrom and from all liability to see to the application thereof. No purchaser or person dealing with the trustees shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the trustees purporting to be done in pursuance of any of the provisions or powers herein contained or as to the regularity of the discharge, resignation or appointment of any trustee; and a transfer of the trust premises or any part thereof executed by the trustee or trustees in whom the same shall be vested at the time of any such discharge, resignation or appointment for the purpose of vesting the same in the trustees for the time being of these presents or providing evidence of such vesting independently of such discharge, resignation or appointment, shall as to the property comprised in such transfer be conclusive evidence in favor of any

such purchaser or other person dealing with the trustees as to the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof or the occasion of such transfer. No purchaser or person dealing with any trustee purporting to act during the absence of any other trustee or under any delegation of authority from any other trustee shall be concerned to ascertain or inquire whether an occasion exists in which he is authorized so to act or in which such delegation is permitted or whether such delegated authority is still subsisting.

17. No corporation, company or body politic shall be affected by notice that any of its shares or bonds or other securities are subject to these presents or be bound to see to the execution of any of the trusts hereunder or to ascertain or inquire whether any transfer of any such shares, bonds or securities by the trustees is authorized, notwithstanding such authority may be disputed by some other person.

18. No trustee or member of any committee appointed by the trustees shall be liable for anything done or omitted by him in good faith and each shall be answerable and accountable only for his own acts, receipts, neglects and defaults respectively and not for those of any other nor of any agent employed by them nor of any bank, trust company, broker or other person with whom or into whose hands any part of the trust estate may be deposited or come, nor for any defect in title or lack of genuineness or invalidity of the shares of stocks, bonds, notes, obligations or other properties or securities at any time included in the trust estate, nor for any loss, unless it shall happen through his or its own wilful default respectively. No trustee, however appointed, shall be obliged to give any bond or surety or other security for the performance of any of his duties in the said trust.

19. Each trustee and each member of any committee appointed by the trustees and each officer, agent and other representative appointed pursuant to any provision hereof shall be entitled to indemnity out of the trust estate against any and all loss and liability incurred by him or them or any of them in the execution of the trust hereby created. But the trustees or any of them or any member of any committee or officer, agent or representative appointed hereunder shall not be entitled to look to the shareholders personally for indemnity against any loss or liability incurred by him or them or any of them in the execution hereof or to call upon the shareholders for the payment of any sum of money or any assessment whatever.

20. In case the trustees shall acquire any interest in real estate as proceeds or income of the trust estate they shall hold the same

upon trust for sale and conversion into personal estate at such time or times and in such manner and upon such terms as they shall approve and they shall have the power to postpone such conversion so long as they in their uncontrolled discretion shall think fit, but all such real estate shall at all times during any postponement of the sale and conversion thereof be considered as personal estate subject to the terms hereof and at all times and to the full extent permitted by law all such real estate shall be considered and treated as personal property for the purposes of the trust hereby created.

Shares and Shareholders.

21. The beneficial interest in the trust estate shall be divided into twenty thousand (20,000) preferred shares, expressed to be of the amount or par value of one hundred dollars ($100) each and one million (1,000,000) common shares without expressed amount or par value. All such shares shall be personal property, shall be assignable and transferable in the manner herein provided and shall entitle the holders thereof only to such rights and interests in the trust estate as are set forth in these presents.

22. The said twenty thousand (20,000) preferred shares of the amount or par value of two million dollars ($2,000,000) and five hundred and sixty thousand (560,000) of the common shares shall be reserved to be issued by the trustees only for the acquisition by them of shares of stock in the C. Company, the S. Company and the T. Company. In the first instance the trustees shall issue for the purposes set forth in this subdivision 22 hereof certificates for the amount or par value of $935,300 preferred shares and 558,000 common shares, and shall deliver the said shares to or upon the order of the parties of the first part hereto. From time to time the trustees shall deliver for each additional share of the common capital stock of the said C. Company received by the trustees one of the preferred shares issued hereunder and shall deliver for each additional share of the preferred stock of the T. Company received by the trustees, one of the preferred shares issued hereunder, and for each additional share of the common stock of the T. Company received by the trustees, one of the common shares issued hereunder, but the total amount of the shares issued hereunder, and for each additional share of the common hereof shall not exceed twenty thousand (20,000) preferred shares and five hundred and sixty thousand (560,000) common shares.

23. The trustees shall from time to time when and as requested by the syndicate managers of the syndicate referred to in the pre-

liminary agreement deliver to or upon the order of said syndicate managers' certificates for common shares issued hereunder up to but not exceeding two hundred and twenty thousand (220,000) shares, upon receiving from the syndicate managers the sum of seven dollars and twenty-seven cents ($7.27) less any discount allowed as hereinafter provided for each share so issued; provided, however, that any of said two hundred and twenty thousand (220,000) shares which shall not have been taken at the above rate by the said syndicate may be issued by the trustees in accordance with the provisions of subdivision 25 hereof.

24. The trustees shall from time to time issue and deliver common shares hereunder according to the terms of the option agreement referred to in the preliminary agreement, up to but not exceeding two hundred and twenty thousand (220,000) shares, upon receiving the sum of seven dollars and twenty-seven cents ($7.27) less any discount allowed as hereinafter provided for each share so issued; provided, however, that any of the two hundred and twenty thousand (220,000) common shares last above mentioned may if not taken and paid for as provided by said option agreement be issued by the trustees in accordance with the provisions of subdivision 25 hereof.

25. Any of the shares not taken as provided in subdivisions 23 and 24 hereof may be issued by the trustees either for money or for property or in payment of liabilities or obligations of the trustees, and if issued for money may be issued fully paid up upon the payment to the trustees of such sum as they shall determine, and if issued for the whole or any part of the price agreed upon for any property they may be issued fully paid up upon the transfer of such property to the trustees. All such shares may be issued without offering the same to existing shareholders or any of them.

26. The trustees may accept or agree to accept payment for any of the shares issued by them under subdivisions 23 or 24 or 25 hereof in instalments and may allow or agree to allow such discount as they may determine in respect of any instalment or instalments paid in advance.

27. The relative rights and interests and the preferences and limitations of the holders of the preferred shares and of the common shares shall be as follows:

The preferred shares shall entitle the holders to receive when and as declared by the trustees dividends at the rate of six dollars ($6) per annum and no more for and on account of each such share. Such dividends shall be cumulative from April 1, 1917, and the moneys therefor shall be set apart before any dividends shall be paid or set apart for the common shares so that if in any year beginning with April 1, 1917, dividends at the said rate shall not have been declared upon the preferred shares and set apart therefor the accumulated and unpaid dividends thereon shall be set apart or provided for before any dividends shall be paid upon or set apart for the common shares.

28. Whenever in any year all such dividends shall have been declared on the preferred shares and set apart and after April 1, 1917, all such cumulative dividends shall have been declared on the preferred shares and set apart any money applicable by the trustees for the payment of dividends then remaining in their hands or under their control may to the extent that the trustees shall see fit be distributed and paid as a dividend ratably among and to the holders of common shares, but before declaring any dividends either upon the preferred or common shares the trustees may in their uncontrolled discretion and to the extent the trustees may see fit set aside sums for reserve or other purposes of the trust.

29. In any distribution by the trustees of the trust estate upon the termination of the trust each preferred share shall entitle the holder thereof to receive out of the trust estate available for distribution to the shareholders the sum of one hundred dollars ($100) or its equivalent and also a sum equal to six per cent. per annum upon the amount of such share for the period from April 1, 1917, to the date of distribution less the amount of any dividends paid thereon during such period before any amount shall be paid to the holders of the common shares. After such amounts shall have been paid in full to or set apart for the holders of the preferred shares the remainder of the trust estate available for distribution shall be distributed ratably among and to the holders of the common shares.

30. The preferred shares as a whole may be redeemed at the option of the trustees on any date after April 1, 1917, fixed for the payment of a dividend thereon and the preferred shares may be redeemed from time to time in portions at the option of the trustees at any date or dates fixed for a dividend thereon upon the payment of the one hundred and three dollars ($103) for each such share and all unpaid dividends accumulated to the date for redemption and upon notice published in a newspaper of general circulation in the city of New York, a newspaper of general circulation in the city of Philadelphia, a newspaper of general circulation in the city of Boston, and a newspaper of general circulation in the city of Montreal once a week for four successive weeks immediately preceding the date of redemption specified in such notice

and if less than all of the preferred shares shall be called for redemption a similar notice shall also be mailed to each of the persons in whose name certificates for preferred shares to be redeemed shall be registered, stating also the number of shares called to be redeemed out of the total number standing in the name of the person to whom such notice is mailed.

31. On or prior to the date fixed for such redemption the trustees shall deposit at such office or agency as shall be designated in such notice of redemption an amount of cash equal to one hundred and three dollars ($103) for each share to be redeemed and the amount of unpaid dividends accumulated thereon to such date of redemption so fixed. In case notice of redemption shall have been published as aforesaid and said sum of money shall be so deposited at the office designated in said notice, dividends on the shares so called for redemption from and after said date of redemption shall cease, and from and after said date the holders of said preferred shares shall have no further right or interest thereunder or in any part of the trust estate except to receive payment for said shares out of the funds so deposited by the trustees at the rate above provided upon presentation and surrender of their respective certificates at the office designated in said notice. If the trustees shall not on or prior to the date of redemption deposit a sum of money sufficient to pay all such shares in the manner above stated dividends shall continue to accumulate on said shares. If at any time the trustees shall determine to call for redemption a portion of all the outstanding preferred shares they shall assign a number to every outstanding preferred share and shall draw by lot the shares to be redeemed.

32. The trustees may in their uncontrolled discretion at any time and from time to time, apply any of the income from the trust estate to the redemption of preferred shares by purchasing the same in the open market for such price as they shall determine not to exceed one hundred and three dollars ($103) for each share and all unpaid dividends accumulated to the date of the purchase.

33. As evidence of the ownership of said preferred and common shares the trustees shall cause to be issued transferable certificates, each of which certificates and the form for the transfer thereof shall be substantially in the following forms respectively except that the trustees are hereby authorized to modify the same from time to time in any manner not inconsistent with the terms and conditions hereof.

Face of Certificate for Preferred Shares.

NORTH AMERICAN COMPANIES.

No. .... Shares.

This certifies that .... is the holder of .... preferred shares, fully paid and non-assessable of the amount or par value of $100 each in the trust called North American Companies, established by an agreement and declaration of trust dated May 5, 1915, between D., T. and C., parties of the first part, and W. and H. as trustees, parties of the second part, and the holders of the shares issued thereunder, parties of the third part. The said shares are issued, received and held subject to the provisions set forth on the back of this certificate, which are expressly made a part hereof and to which reference is hereby expressly directed. The shares represented by this certificate are transferable only by the holder in person or by attorney on the books of the trustees under the said agreement and declaration of trust upon surrender of this certificate properly indorsed.

IN WITNESS WHEREOF, the trustees under the said agreement and declaration of trust have signed this certificate this .... day of ...., 19....

................,

................,

As trustees under the agreement and declaration of trust dated May 5, 1915, establishing the trust therein called North American Companies and not individually.

Face of Certificate for Common Shares.

NORTH AMERICAN COMPANIES.

No. .... Shares.

This certifies that .... is the holder of .... common shares fully paid and non-assessable without expressed amount or par value in the trust called North American Companies, established by an agreement and declaration of trust dated May 5, 1915, between D., T. and C., parties of the first part, and W. and H. as trustees, parties of the second part, and the holders of the shares issued thereunder, parties of the third part. The said shares are issued, received and held subject to the provisions set forth on the back of this certificate, which are expressly made a part hereof and to which reference is hereby expressly directed. The shares represented by this certificate are transferable only by the holder in person or by attorney on the books of the trustees under the said agreement and declaration of trust upon surrender of this certificate properly indorsed.

In witness whereof, the trustees under the said agreement and declaration of trust have signed this certificate this .... day of ...., 19....

................,
................,
As trustees under the agreement and
declaration of trust dated May 5,
1915, establishing the trust therein
called North American Companies
and not individually.

Back of Certificates for both Preferred and Common Shares.

Provisions referred to on the face of this certificate:

1. The agreement and declaration of trust (hereinafter called the trust agreement) referred to on the face of this certificate provides that the beneficial interest in the trust estate thereby established shall be divided into 20,000 preferred shares, expressed to be of the amount or par value of $100 each and 1,000,000 common shares without expressed amount or par value and provides for the issue of the said shares by the trustees thereunder.

2. As and to the extent provided in the trust agreement:

(a) The shares are of two classes, to wit, preferred and common.

(b) The holders of the preferred shares are entitled to receive when and as declared by the trustees dividends at the rate of six dollars ($6) per annum and no more for and on account of each such share. Such dividends are cumulative from April 1, 1917, and the moneys therefor shall be set apart before any dividends shall be paid or set apart for the common shares so that if in any year beginning with April 1, 1917, dividends at the same rate shall not have been declared upon the preferred shares and set apart therefor the accumulated and unpaid dividends thereon shall be set apart or provided for before any dividends shall be paid upon or set apart for the common shares.

(c) Whenever in any year all such dividends shall have been declared on the preferred shares and set apart and after April 1, 1917, all such cumulative dividends shall have been declared on the preferred shares and set apart any money applicable by the trustees for the payment of dividends then remaining in their hands or under their control may to the extent that said trustees shall see fit be distributed and paid as a dividend ratably among and to the holders of the common shares, but before declaring any dividends either upon the preferred or common shares the trustees may in their uncontrolled discretion and to the extent the trustees may see fit set aside sums for reserve or other purposes of the trust.

(d) In any distribution by the trustees of the trust estate upon the termination of the trust each preferred share shall entitle the holder thereof to receive out of the trust estate available for distribution to the shareholders the sum of one hundred dollars ($100) or its equivalent and also a sum equal to six per cent. per annum upon the amount of such share for the period from April 1, 1917, to the date of distribution less the amount of any dividends paid thereon during such period before any amount shall be paid to the holders of the common shares. After such amounts shall have been paid in full to or set apart for the holders of the preferred shares the remainder of the trust estate available for distribution shall be distributed ratably among and to the holders of the common shares.

(e) The preferred shares as a whole may be redeemed at the option of the trustees on any date after April 1, 1917, fixed for the payment of a dividend thereon, and the preferred shares may be redeemed from time to time in portions at the option of the trustees at any date or dates fixed for a dividend thereon upon the payment of one hundred and three dollars ($103) for each such share and all unpaid dividends accumulated to the date for redemption upon notice published in a newspaper of general circulation in the city of New York, a newspaper of general circulation in the city of Philadelphia, a newspaper of general circulation in the city of Boston, and a newspaper of general circulation in the city of Montreal once a week for four successive weeks immediately preceding the date of redemption specified in such notice, and if less than all of the preferred shares shall be called for redemption a similar notice shall also be mailed to each of the persons in whose names certificates for preferred shares to be redeemed shall be registered, stating also the number of shares called to be redeemed out of the total number standing in the name of the person to whom such notice is mailed. In case notice of redemption shall have been published as aforesaid, and the amount to be paid upon the shares at redemption shall have been deposited at an office or agency of the trustees at or before the date for redemption, dividends on the shares called for redemption from and after said date shall cease, and from and after said date the holders of said preferred shares shall have no further right or interest thereunder or in any part of the trust estate except to receive payment for said shares out of the funds so deposited by the trustees at the rate aforesaid upon presentation and surrender of their respective certificates at the office designated in said notice.

3. All the provisions of the trust agreement are hereby made a part hereof as if the same were herein set forth at length and reference is hereby also made to the preliminary agreement therein mentioned among the parties of the first part to the trust agreement in pursuance of which preliminary agreement and subject to the terms of which the trust agreement is made and all the said shares are issued, received and held subject and the holder hereof hereby expressly assents to all the provisions of the trust agreement and the preliminary agreement. An original of the trust agreement and of the preliminary agreement are lodged with the trustees at their office and are open to the inspection of any shareholder during business hours.

4. The within certificate is made by the trustees not individually, but as trustees under the trust agreement, and any and all personal liability of the parties of the first part named in the trust agreement and of the trustees, executive committee and the shareholders thereunder is by the acceptance and as a consideration for the issue and execution hereof expressly waived by the holder hereof.

For value received .... hereby sell, assign and transfer unto .... of the shares represented by the within certificate and do hereby irrevocably constitute and appoint .... attorney to transfer the said shares on the books of the trustees under the within mentioned agreement and declaration of trust with full power of substitution in the premises.

Dated ...., 19....

....

In presence of

....

Notice.—The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatever.

34. An original of this trust agreement and of the preliminary agreement herein referred to shall be lodged with the trustees and kept at their office and shall be open to the inspection of any shareholder during business hours.

35. No certificate shall be issued for less than one share of either class. Certificates may be signed by the trustees or by any

agent thereunto authorized by them. In case any of the trustees in whose name and in whose behalf any of said certificates shall have been signed shall cease to act in such capacity before the certificate so signed shall have been issued, such certificate may, nevertheless, be issued as if the persons in whose name and in whose behalf such certificates were signed had not ceased to be such trustees.

36. The trustees shall keep or cause to be kept at an office or agency in the city of Boston or in the city of New York or in the city of Philadelphia or in the city of Montreal, or in either of said cities, transfer books in which shall be registered the names of the holders of the certificates, together with the post office address of each, as given by him for such purpose. The trustees may appoint a transfer agent to keep such books and may require that all certificates before issue shall be countersigned by such transfer agent, and that no such certificates shall be or become valid for any purpose until so countersigned. The trustees may also appoint a registrar and may require that all certificates for shares issued hereunder shall be countersigned by such registrar, and that no such certificates shall be or become valid for any purpose until so countersigned. Shares shall only be transferable on said books upon the execution of a transfer substantially in the form indorsed on said certificates and on surrender of the certificate by the registered holder in person or by attorney and in accordance and compliance with such rules and regulations as from time to time the trustees may establish. The trustees, any transfer agent or registrar appointed by them, executive committee, and all other persons may deem and treat the person in whose name any certificate shall be registered upon the books kept as above provided as the absolute owner of the share or shares represented by such certificate for the purpose of receiving any dividend or other payments on or in respect thereof, for the purpose of voting and acting in respect thereof and for all other purposes, and none of them shall be affected by any notice to the contrary. Such transfer books may be closed by the trustee at and during any period prior to the date of payment of any dividend or the distribution of any part of the trust estate upon the shares, or prior to the date of any meeting of shareholders. The trustees may also close such transfer books for such other reason and for such period as they may deem advisable.

37. Until permanent certificates can be prepared the trustees may issue and deliver in lieu thereof and subject to the same provisions, limitations and conditions, temporary typewritten, printed or lithographed certificates substantially of the purport of the cer-

tificates heretofore recited. Such temporary certificates shall be countersigned by the transfer agent or by the registrar in the manner above provided if any such transfer agent or registrar or both shall have been appointed by the trustees in like manner as herein provided with respect to the permanent certificates. Such temporary certificates shall be exchangeable at an office of the trustees for permanent certificates without expense to the holder, and until such exchange the said temporary certificates shall be transferable in the same manner as permanent certificates and shall entitle the holder to the same rights as permanent certificates.

38. In case of the mutilation, loss or destruction of any certificate, the trustees may on evidence satisfactory to them that it has been so mutilated, lost or destroyed and upon such terms as to indemnity and otherwise as may be prescribed by them, issue a new certificate or certificates in the place of the certificate mutilated, lost or destroyed.

39. Every transfer (otherwise than by operation of law) of any share and the interest represented thereby shall be in writing by the owner and registered holder, and upon delivery thereof with the existing certificate for such share to the trustees of their transfer agent shall be recorded on the transfer books and a new certificate shall be given to the transferee. In case of a transfer of only a part of the shares in any certificate, a new certificate for the residue thereof shall be given to the transferor. Until the transfer shall be so delivered and recorded the transferor shall be deemed to be the holder of the share or shares comprised therein for all the purposes of the trusts hereof, and neither the trustees nor their transfer agent shall be affected by any notice of any unrecorded transfer or otherwise to the contrary.

40. Any person becoming entitled to any share in consequence of the death, bankruptcy or insolvency of any shareholder in any way other than by a transfer in accordance with the subdivision 39 hereof, upon the production of such evidence of his title as may be prescribed by the trustees and upon surrender of the said certificate to the trustees or one of their transfer agents, shall be registered in the transfer books as the holder of the said shares and receive new certificates for the same.

41. Two or more persons holding any share shall be joint tenants of the entire interest therein and no entry shall be made on any certificate or in the trustees' books that any person is entitled to any future, limited or contingent interest in any share. But any person registered as the holder of any share may, subject to the provisions hereinafter contained, be described therein as a

trustee of any kind, and any words may be added to the description to identify the trust.

42. The trustees shall not, nor shall the committee or shareholders or any transfer agent or other agent of the trustees or committee, be bound to take notice or be affected by notice of any trust, whether express, implied or constructive, or any charge or equity to which any of the said shares or the interest of any of the shareholders in the trusts in these presents may be subject or to ascertain or inquire whether any sale or transfer of any such share or interest by any such shareholder or his personal representatives is authorized by such trust, charge or equity, or to recognize any person as having any interest therein except the persons registered as such shareholders, and the receipt of the person in whose name any share is registered, or if such share is registered in the names of more than one person the receipt of one of said persons shall be a sufficient discharge for all dividends and other money payable in respect of said shares and from all liability to see to the application thereof.

43. Unless specific notice to the contrary shall have been given in writing to the trustees or their transfer agent, they may deem and treat any person presenting a share certificate together with the transfer thereof purporting to be signed by the registered holder of such certificate as the *bona fide* and sole owner thereof and accordingly on demand they may transfer the shares thereby represented.

Meetings of the Shareholders.

44. An annual meeting of the shareholders for the election of trustees and the transaction of such other business as may be brought before the meeting shall be held at the office of the trustees or such other place as may be determined by the trustees on the second Tuesday of May in each year at twelve o'clock noon, beginning with the year 1916. At every such meeting the trustees shall lay before the shareholders an account of the receipts and expenditures and income account of the trust estate for the year ending on the 31st day of December next preceding such meeting. The trustees and any shareholder may also submit at any such meeting any report, resolution or proposition concerning which action by the shareholders is desired. At each annual meeting the whole number of trustees, as fixed by this agreement and declaration of trust, or as increased or decreased under the provisions hereof shall be elected by the shareholders and any business brought before the meeting may be considered or transacted.

45. Neglect or failure to hold such annual meeting shall not cause any vacancy among the trustees, and the persons acting as trustees shall continue to act until the holding of such meeting.

46. The trustees may at any time call a special meeting of the shareholders to be held at such place as the trustees may determine. At a special meeting no business shall be transacted other than such as is included in the purposes for which the meeting is called.

47. The chairman of the executive committee shall preside at every meeting of the shareholders, but if he is not present at the commencement of the meeting or being present shall not be willing to preside or shall not be acceptable for such purpose to the shareholders present, they may choose another person to preside.

48. Written or printed notice of the annual meeting and of special meetings of the shareholders shall be given seven days at least before any such meeting on behalf of the trustees to each of the shareholders by such person as the trustees may designate as their secretary and in such manner as the trustees may prescribe or approve, and such notice shall specify the time and place of the meeting, and in the case of a special meeting shall state the purposes thereof. The shareholders may waive in writing the notice required for annual and special meetings of shareholders. No failure to give notice and no irregularity in notice of the annual meeting or in the mailing thereof shall affect the validity of such meeting or of any proceedings thereof.

49. At all meetings every shareholder shall have one vote for every share standing in his name on the books of the trustees, whether preferred or common, and may vote in person or by proxy appointed by him in writing or in the case of a corporation appointed by it in writing under its corporate seal. The holders of a majority of all the shares issued and outstanding shall constitute a quorum for the transaction of business, but the holders of a less amount may from time to time adjourn the meeting to a time fixed by them without further notice to the shareholders of the time so fixed for the holding of such adjourned meeting.

50. If the holder of any share be a minor or a person of unsound mind or subject to the legal control of any other person as regards the control or management of such share, he may vote by his guardian, tutor, committee, curator or other person having such control, and such vote may be given in person or by proxy. When any share is held jointly by several persons, anyone of them may vote at any meeting in person or by proxy in respect of such share, but if more than one of them shall be present at such meeting in person or by proxy no vote shall be received in

respect of such share unless all such persons so present join in or assent to such vote.

51. For the purpose of determining the shareholders entitled to vote at any meeting, the trustees may close the transfer books at the end of such day as they may direct and the same shall remain closed until the end of the meeting, and no person shall be entitled to vote at such meeting whose name is not entered on the transfer books prior to the closing thereof.

52. Except as otherwise herein provided, a majority of the votes given at any meeting shall constitute the action of the meeting, and in case of an equality in number of votes the chairman of the meeting shall have an additional vote.

53. At any time the shareholders may consent to the termination by the trustees of the trust hereby created at an earlier date or different time than elsewhere in this agreement, limited or prescribed, and may consent to any amendment, change or addition to these presents or to any of the terms and provisions hereof which shall have been adopted by the trustees. Any such consent may be given without a meeting of the shareholders by writing signed by the holders of at least two-thirds in number of all the shares at the time outstanding or at a meeting of the shareholders by resolution adopted by the affirmative votes of the holders of at least two-thirds in number of all the shares at the time outstanding. No such action shall, however, be taken at a meeting of the shareholders, either annual or special, unless the proposed action shall have been referred to in the notice of the meeting.

54. Every notice to the shareholders required or provided for in these presents may be given to them personally or by sending it to them through the post office in a postage prepaid letter addressed to each of them respectively at his address as the same appears on the records of the trustees and posted in the city of Boston or the city of New York or the city of Philadelphia or the city of Montreal, and shall be deemed to have been given at the time when it is so posted. Any notice so sent to the registered address of any shareholder shall be deemed to have been duly sent in respect of any such share, notwithstanding such shareholder be then deceased and whether the trustees or the members of the committee or any person sending the notice shall have knowledge or not of his death until some other person shall be registered as a holder. The certificate of the person or persons giving such notice shall be sufficient evidence thereof and shall protect persons acting in good faith in reliance upon such certificate.

Duration of the Trust.

55. Unless sooner terminated as provided in subdivision 56 hereof the trust hereby created shall continue until the expiration of twenty-one (21) years after the death of the last survivor of the following named persons: ...., and upon the expiration of such period the trust shall terminate.

56. The trustees may with the consent of the shareholders given in accordance with subdivision 53 hereof terminate the trust hereby created at an earlier date or different time than that limited or prescribed in subdivision 55 hereof.

57. Upon the termination of the trust hereby created whether by limitation of time as provided in subdivision 55 hereof or by action of the trustees with the consent of the shareholders as provided in subdivisions 53 and 56 hereof the trustees shall sell or otherwise dispose of the trust estate for considerations and upon such terms as in their absolute and uncontrolled discretion they shall fix and determine, not however inconsistent with the terms and conditions of this agreement. The proceeds of such sale shall be applied as follows:

First. To the payment of all prior costs, charges and expenses;

Second. To the payment of any then existing indebtedness incurred or issued by or on behalf of the trustees with the written approval of the trustees;

Third. To the payment of all charges, expenses and liabilities of the trustees and of the executive committee incurred in connection with the administration, management, control and termination of the trust hereby created;

Fourth. The remainder thereof shall be distributed among the shareholders as provided in subdivision 29 hereof.

In case the trust estate shall be sold and disposed of partly for cash (always provided that there shall be cash sufficient for the purposes hereinabove enumerated in divisions first, second and third of this subdivision 57 hereof and partly for securities or other property), the trustees shall place a valuation upon such securities or other property and shall distribute the same in kind to the shareholders on the basis set forth in division fourth of this subdivision 57, it being within the absolute and uncontrolled discretion of the trustees to determine what part, if any, shall be paid to the holders of the preferred and common shares in cash and what in securities or other property. Any valuation, determination, sale or distribution so made by the trustees shall be conclusive upon all shareholders and other persons interested in the trust estate. Any trustee or any member of the executive committee or any shareholder may bid for and purchase any property at any sale at public auction or private sale without accountability except for the payment of the purchase price. In making any sale the trustees shall have the right to sell at public auction or private sale and to buy in at such sale or rescind or vary any contract of sale and to sell without being answerable for loss; and in connection therewith to execute any and all deeds and instruments.

MISCELLANEOUS PROVISIONS.

58. The ownership of any share or any security or obligation issued hereunder in accordance with the provisions hereof shall not entitle such owner to any title in or to the trust estate whatsoever or to any right to terminate the trust hereby created or to any right to require any distribution or partition of the trust estate or any part thereof other than in accordance with the terms and provisions hereof.

59. The death of any trustee or of any holder of any share or security issued hereunder in accordance with the provisions hereof at any time during the continuance of the trust hereby created shall not operate to terminate the said trust and shall not entitle the legal representatives of the deceased trustee or of such deceased holder to terminate this trust or to require any accounting or distribution or partition of the trust estate or of any part thereof, but the legal representatives or assigns of any deceased holder of any share or other security issued hereunder shall succeed to the rights of such decedent.

60. Nothing in this agreement or in the certificates issued hereunder expressed or implied is intended or shall be construed to give to any person or corporation other than the parties hereto including the shareholders, any legal or equitable right, remedy or claim under or in respect of this agreement or of any covenant, condition or provision therein contained, all its covenants, conditions and provisions being intended to be and being for the sole and exclusive benefit of the parties hereto including the shareholders.

61. In the construction of the provisions of this agreement and the certificates issued hereunder the word "Trustees" whenever used means the trustees for the time being, whether original or successor, and the word "trustee" shall apply to any one of the trustees whenever the context so admits. Whenever the word "stock" is used herein it shall be deemed to extend to and include voting trust certificates for any such stock.

62. The headings of different parts of these presents and the

marginal notes are inserted for convenience of reference and are not to be taken to be any part of these presents or to control or affect the meaning, construction or effect of the same.

63. The trustees may, with the consent of the shareholders, given in accordance with subdivision 53 hereof amend, change or add to these presents and any of the terms and provisions thereof in any manner and to any extent, but no such amendment shall affect the validity or effect of anything previously done by the trustees or shareholders hereunder.

64. This instrument is executed by the trustees and delivered by all the parties hereto in the commonwealth of Massachusetts and with reference to the laws thereof; and the rights of all parties and the construction and effect of each and every provision hereof shall be determined by the laws of said commonwealth.

65. This agreement is executed in five counterparts by the parties of the first and second parts, each of which counterparts shall be deemed an original and the acceptance of the certificates issued hereunder shall constitute the shareholders parties to this agreement with the same force and effect as if they had hereunto signed their names and affixed their seals.

IN WITNESS WHEREOF, at the city of Boston, in the commonwealth of Massachusetts, the parties of the first and second parts have hereunto subscribed their names and affixed their seals as of the day year above written.

................,
................,
................,
Parties of the first part.
................,
................,
................,
Trustees.

FORM OF LIMITATION OF LIABILITY IN LEASES OF UNINCORPORATED ASSOCIATIONS.

Provided always, and it is hereby declared and agreed, that any claim for debt or damages under the reservations of rent and the covenants on the part of the lessees herein contained or any of them shall be a charge upon and shall be enforceable against the property and effects subject to the trusts of the said indenture at the time of proceedings to enforce the same, but no such claim for debt or damages nor any other claim under the stipulations herein contained shall be enforecable against any trustees or trustee for the time being of said indenture personally, and neither the trustees for the time being nor the shareholders under said indenture of trust shall be held to any personal liability under or by reason of any of the stipulations herein contained. But this provision shall not prevent the lessor from obtaining and enforcing such decree in equity against the trustees for the time being as may be necessary or appropriate to compel the application of the property and effects then in their hands as trustees to the performance of the stipulations of this lease or to prevent the trustees for the time being from violating the stipulations herein contained. and this provision shall not prevent the lessor from maintaining such proceedings as may be necessary or appropriate to obtain possession of the demised premises in case of a violation of the provisions hereof; nor shall this provision otherwise interfere with the force or effect of any of the said covenants or affect any other right or remedy of the lessor in respect of any default in the performance or observance thereof, and this provision shall not exempt any such trustees from personal liability in respect of any trusts herein contained regarding the application of any insurance money or of any moneys paid to them out of damages received for such taking as is hereinbefore mentioned (but so that such personal liability of any trustee shall exist only as to breaches of trust which occur while he is trustee) and, further, that this provision shall not exempt from personal liability any assignee of this lease who shall not be a trustee under said indenture.

APPENDIX.

APPENDIX.

CORPORATE CREDIT.

Bonds are long-time paper whose value is based on a corporation's readiness and ability to pay interest and principal, as has been shown. Not all corporations issue bonds, nor do all corporations that have bond issues outstanding exhaust all their proper credit thereby. It has been stated as a principle that bonds should not be issued to an amount which will exceed the value of a corporation's property in times of adversity. The same principle extends to borrowing money on short time, or commercial paper, one reason being that it is poor financial practice to sell evidences of indebtedness at a heavy discount, which is necessary when the security is insufficient. And when there is a bond issue that does not cover an amount equal to a conservative estimate of the value of a corporation's property, commercial paper may often be issued advantageously to the limit fixed by the estimate. Short-time paper issued beyond this estimate is not completely secured, since, except when it is given in exchange for employes' services, which are constituted by statute a prior lien, it comes after the bond claims in the distribution of the assets of a corporation. To pay current expenses and to supply operating funds till the indebtedness for merchandise credit extended to patrons is satisfied by payment, business concerns must often borrow money from the banks. When interest rates are low, and for other reasons, it is often better to do this than to raise funds by selling bonds or preferred stock. But banks must be satisfied of the security of a corporation's paper before they will extend credit. A conservative bank will require trustworthy evidence of the resources of a corporation and knowledge of the character of the corporation's officers and directors. The ability of the corporation to pay its notes and its reputation for promptly meeting all its obligations will determine its ability to secure credit in case it is not borrowing on salable collateral securities. The bank must know that it can force payment in case of default, and it endeavors to learn as nearly as may be, by investigating the reputation of the corporation for promptness or slowness in settling its previous indebtedness, that it will not have to incur the expense of forcing payment. No corporation can afford a bad reputation in either of these respects. It is in danger of being forced into dissolution if it has debts it cannot pay, and if it is able but unwilling to satisfy its creditors, it will have difficulty in securing loans in the future. A corporation may measure its financial stability in a degree by its ability to fill out satisfactorily enough to obtain a loan from a conservative bank the standard form of report recommended by the American Bankers' Association. This form of report is reprinted here in full. Many of the best banks in American cities use this form, and all corporations applying for loans must be able to fill it out to the bank's satisfaction. It is well for a corporation with a likely need of borrowing money to secure a "line of credit." Having a line of credit means that the corporation may secure any needed credit at its bank up to a certain amount, which amount is determined by the report submitted. In small cities and towns the bankers' personal knowledge of their patrons and their patrons' business usually makes unnecessary such elaborate statements.

Among many banks another consideration determines the amount a company may borrow, i. e., the value of the company's business to the bank. In New York a company generally is allowed to borrow five times the amount of its average deposit, provided other conditions are right. In the west this rule is not adhered to, but the practice of western banks is tending more in that direction.

Standard Form

American Bankers' Association

To the Capital National Bank of Indianapolis:

Name (Corporate style under charter)..

Business..

Location.................................. .... Branches...................................

For the purpose of procuring credit from time to time from you for our negotiable paper or otherwise, we furnish you with the following statement, which fully and truly sets forth our financial condition on the........day of................ 1.... ; which statement you can consider as continuing to be full and accurate unless notice of change is given you. We agree to notify you promptly of any change that materially reduces our pecuniary responsibility.

In consideration of the granting of such credit, we agree that if we at any time stop payment or become insolvent, or commit an Act of Bankruptcy, or if any of the representations made below prove to be untrue, or if we fail to notify you of any material change as before agreed, then and in either such case all our obligations held by you shall immediately become due and payable without demand or notice, and the same may be charged against the balance of any deposit account kept by us with you, we hereby giving a continuing lien upon such balance of deposit account from time to time existing to secure all our obligations held by you.

ASSETS		
Cash in........Bank......		
Cash on Hand..............		
Bills Receivable, Good...		
Accounts Receivable, Good		
Bills or Accounts Receivable, Owing by Officers		
Merchandise, Finished (How Valued ....)		
Merchandise, Unfinished (How Valued..........)		
Raw Material, (How Valued ....)		
Real Estate...............		
Machinery and Fixtures..		
Other Assets, and of what composed.		
....		
....		
....		
....		
....		
....		
....		
Total		

LIABILITIES		
Bills Payable for Merchandise		
Bills Payable to Own Banks....................		
Bills Payable for Paper Sold.....................		
Open Accounts.......... .		
Bonded Debt (When Due.)		
Interest on Bonded Debt.		
Mortgages or Liens on Real Estate..............		
Chattel Mortgages........		
Deposits of Money with us		
Other Indebtedness, and of what composed.		
....		
....		
....		
....		
....		
....		
Total Liabilities....		
Capital....................		
Surplus, Including Undivided Profits............		
Total		

Contingent Liability. { Accommodation Endorsements.................................
Endorsed Bills Receivable Outstanding.......................

Specify any of above assets or liabilities pledged as, or secured by, collateral, and state collateral.

....

(Over.)

CAPITAL

Authorized..............Subscribed..............Paid in.............
Held by Company as Treasury Stock...............................
How paid in: Cash $......... ....Other Property...............
Description of other property and how valued.........................
What portion of Real Estate, if any, has been acquired through bad debts?..
In whose name is title to Real Estate held...........................
Incorporated in what State and under what general Law or Special Act..
Date of Charter.................Commenced Business................
Are Stockholders liable beyond amount of stock subscribed...........
If so, to what extent..
Amount of annual business.............Annual Expenses.............
Annual Dividends...............
When was last Dividend declared.....................Rate...........
Insurance carried on Merchandise...... ....Real Estate............
Is Mortgage above stated a first lien on all the assets.................
Regular times of taking inventory.....................................
Give basis of statement, whether actual inventory, by whom taken and date, or if estimate, by whom made and date. { ....
....
....
What amount, if any, of Accounts and Bills Rec., not charged off, is past due, extended or renewed......................................
Amount charged off for bad debts last year.........................
Amount recovered during same period..............................
Amount charged off account of plant preceding year..................
State last date of taking trial balance and if same proved.............
Regular times of balancing books.................................
Number of Bank Accounts and where kept ....

OFFICERS

NAME IN FULL	ADDRESS
President,......................	....
Vice-President,..................	....
Secretary,......................	....
Treasurer, ...	....

DIRECTORS

NAME IN FULL	ADDRESS
....	....
....	....
....	....
....	....

Please sign Company's Name here.............................
By.........................

Date Signed.................

The foregoing statement has value to the extent that it is accurately made. Such a report made by an unintelligent and careless or dishonest bookkeeper or clerk may be very misleading. James G. Cannon recommends that the custom be established of requiring that statements of financial condition of factories be accompanied by the joint certificates of a certified public accountant and of an expert engineer. The accountant will have concerned himself with the books and records of the corporation, and the engineer will have concerned himself with the physical properties—with the value of the plant, with the plant's adaptability to its use, with the value of raw materials, and with trade conditions, etc. The banker then has the sense of security due to the distinterested and impartial nature of the reports and valuations.

MARKETING NOTES IN THE OPEN MARKET.

The amount a company can borrow from a bank depends upon several considerations—the company's credit, the value of its business to the bank (earnings on its deposits less expense of caring for its business), the legal limits to the bank's loaning power, etc. It sometimes is desirable or necessary to sell commercial paper (promissory notes) through a note broker. In former times these notes were given only for merchandise bought, but now they are given without reference to the purchase of any special merchandise, in order to discount bills. "Of late years," says the Boston Commercial Bulletin, "the practice has arisen among merchants of drawing notes payable to their own order and selling them through brokers to banks or other lenders in the open market. The practice has been encouraged in two ways: first, because sellers of nearly all kinds of staple merchandise offer large discounts for cash, and the buyer who sells his note for money and then pays the money for the merchandise gets the benefit of these discounts; and second, because a large number of note brokers are constantly going about among merchants and urging them to make such paper for sale. When a merchant secures his funds by discounting merchandise notes at one or more banks at which he keeps regular accounts, the banks thus have an accurate method of determining the amount of paper in the market bearing his signature or indorsement, and whether it is safe to accept any more of it. But the commercial paper which is sold in the open market becomes so scattered that nobody but the maker knows how much of it is in existence at any one time. Cases have occurred in which young men began business with small capital, and being encouraged to increase their operations by making single-name notes and selling them through brokers, have thus established a credit utterly disproportionate to their means [usually a very bad thing for the young man as well as for the note buyers]. The mere fact that their notes have become known in financial circles often adds to their credit and enables them to give more notes." Notes should never be marketed for any other purpose than legitimate business. For future security, borrowings should be limited to the minimum value of the company's property as the value is estimated in hard times. It is not good financiering to sell notes at a heavy discount, though the rate of interest be below the usual percentage, and this will have to be done if the business statement submitted to prospective purchasers does not show a properly limited disposal of evidences of indebtedness. It is best, where possible, to arrange the interest so that the notes will bring their face value. Merchants often sell their paper at six or seven per cent. and discount their own bills at seven to nine per cent., making two or three per cent. by borrowing. If there is any legitimate reason for secrecy in borrowing it can best be maintained by selling notes through a broker. Albert S. Bolles describes the methods of the note broker as follows (in Practical Banking, published by Levey Bros., Indianapolis): "Sometimes the broker has the notes in his possession for sale; in other cases he has simply a memorandum of them. In the latter case he has a printed form containing the name of the maker, amount, when and where payable, indorser and other particulars. A list is sent to a bank containing such a description of the notes, or the broker or his agent may visit the banks personally and exhibit such list or the paper itself. The printed list of notes that is sometimes sent to banks may contain a description of a hundred pieces of paper, and is marked, 'This is for bankers' use only.' Each piece is numbered. If a bank wishes to see any of the pieces therein described, on application they are sent to the bank by the broker. If a note broker is selling all the paper given by a certain merchant, the broker will be careful in offering it for sale. If the banker has $20,000 of the paper, and the broker knows he cannot increase the amount, he will be careful not to offer any more. He will also be careful not to put such paper on a printed list through fear the banker may conclude the merchant is issuing more paper than he ought to issue, if the merchant's name appears frequently on printed lists. Note brokers, or their agents, often visit banks several times daily." A first-class note broker will not fear to offer holdings either on printed lists or personally, since he has assured himself, through the issuing company's sworn statements, that the company is not issuing more paper than it can care for. Purchasers of commercial paper will usually do better to buy through a reliable broker than direct, as many losses have been caused by companies who sent their paper direct to banks with the privilege of purchase or return. The Altman & Co. (Akron, Ohio) paper is an example in point.

"Brokers do not always get possession of notes until they have paid for them. Several practices exist in this regard. One practice is for the merchant to make notes and then deliver them to a note broker for sale. The latter may give a receipt or acknowledgment, or not. In such a case the merchant has entire confidence in the broker, otherwise he would not give him notes without adequate security. * * * Another way is for merchants to leave their paper with a note broker and get immediately from him a certain amount thereon. A merchant, for example, may leave $25,000 of paper and ask for $10,000, expecting the balance when the paper is sold. The note broker pays him this advance on account and, after selling the paper and deducting his commission, sends the balance. Another way is for the note broker to buy the paper, paying therefor at the time of the purchase. A note broker will go to a merchant and will say he will take so much of the merchant's paper at such a rate of interest. If the rate be acceptable, the merchant will sell paper and get the money. In these cases the broker expects to sell the paper so as to net the purchaser a lower rate of interest and thus make more than he would if charging the ordinary commission. Many brokers do wholly a business of this kind—buying paper and selling it at the best rate they can obtain for it. In negotiating paper note brokers sometimes indorse it, but bankers and others buy it because the maker is supposed to be good, and not because the broker indorses it."

The note broker's profit on paper sold through him is usually one-eighth or one-fourth of one per cent.

CORPORATION BOND AND STOCK INVESTMENTS.

The investor, either in bonds or stocks, will find much in the foregoing pages to enlighten him in buying judiciously. In the part on accounting, Mr. Greene's analysis of a statement will be of assistance in estimating the value of a stock by applying a similar method to the statement of the concern whose stock the investor is investigating. Frequently concerns that are hard up will try to save themselves by issuing additional stock—common or preferred—and the statement of a "going concern" which is thus issuing stock should be carefully examined. The wording of a preferred stock or bond contract should be carefully read, as the name of a bond or stock is sometimes misleading. A satisfactory statement and a contract that secures the purchaser without question as to his rights are necessary to safety of principal and interest or dividends. One cannot buy a stock or bond having a contract on it and claim that he was misled as to the character of it. Whether he reads or does not read the contract he is estopped from complaining. It is usually well to read the articles of association and sometimes the by-laws of the corporation. In buying the securities of a public utility or franchise corporation the franchise should be examined with reference to its length in years, its scope, the terms or conditions of its renewal, and its limitations, if it has any. The Art of Investing says: "We must also bear in mind and carefully weigh the character of the community which grants the franchise, and not overlook the possible effect of a change in public sentiment. While a city or other municipality cannot, as a rule, cancel a franchise which has been legally granted, and with the terms of which the company has complied, yet there are methods whereby the community can, if it so elect, take to itself, through taxation, what is generally termed the 'unearned increment' in the franchise. For instance, a city may, by legislation, limit the rate of fare which the company may be allowed to charge; it may insist upon a transfer system which will tend to reduce the income of a road; it may adopt a franchise law requiring the company to pay into the city's treasury a certain proportion of its earnings in addition to the amount paid for ordinary taxes. This feature of the franchise question is coming to the front very rapidly nowadays, and it is quite necessary for the intelligent investor to be thoroughly informed along this line." The analysis of railroad reports, for investors in railway securities, is well treated in Greene's Corporation Finance and in Woodlock's Anatomy of a Railroad Report and Ton-Mile Cost. Railway accounts and statistics are discussed also in Johnson's American Railway Transportation. The Art of Wall Street Investing (Moody) is helpful generally. Ideas as to the proper capitalization of corporations may be had in the discussions on that subject in this book, and there is useful information under the heading "Bonds." The income tables in the appendix will also be useful to the investor.

In The Art of Investing, Mr. Moody shows the necessity for personal knowledge on the part of the investor. He says: "Two common and fatal mistakes should be avoided. One is relying solely upon the advice of another. No one competent to form an opinion for himself should put his pecuniary interests unreservedly in the keeping of another. Such absolute confidence invites betrayal. By far the greater number of losses to investors have been in securities purchased exclusively on the recommendation of outside parties. While it is well to get the opinion of a reputable broker, the purchaser should investigate for himself. [It is sometimes wise to get the opinions of several brokers and weigh their opinions against one another.] The other mistake is to uniformly give preference to listed securities. * * * Many persons seem to think that stocks and bonds must have a value if they are quoted at some stock exchange, forgetting how many fancies have been ballooned until they have burst at such places. On the contrary, such a position is likely to expose them to manipulation for purely speculative purposes. Stock exchange quotations are often unsafe guides to buyers. They represent not merely the value of the property but the pitch of speculation at the time. * * * They are pretty sure to be too high or too low. * * * Securities, in the long run, must stand upon their merits, and purchasers have merely to follow business principles as taught by the canons of common sense."

Other valuable advice given by Mr. Moody is this: "Always question any proposition offering stocks or bonds for sale where such offers are made directly by the company itself, and not through a banking house or other reputable concern. If no bankers or brokers are handling the sale of securities, it is usually the case that there is something 'shady' about the scheme. There are exceptions, of course, but not many. If the securities are offered by bankers and brokers, the next step should be to ascertain the standing, reputation and financial strength of the bankers or brokers themselves. Wall street and other financial centers have their full share of irresponsible concerns of this class."

COMMITTEE ON STOCK LIST.

NEW YORK STOCK EXCHANGE.

January 1, 1916.

This committee will meet on Mondays at 3.15 p. m.

An application, conforming to these requirements, signed by an executive officer of the applying corporation, or voting trustees or depositary committees, and six printed or typewritten copies must be filed with the Secretary of the Exchange at least five days prior to date set for consideration.

Applications must be accompanied by the required papers and agreements, and by a check for fifty dollars for each $1,000,000, or portion thereof, of each class of security, or for each 10,000 shares, or portion thereof, of stock without nominal or par value. Check should be drawn to the order of "Treasurer of the New York Stock Exchange."

An application for the listing of Governmental, State, County or Municipal securities should be signed by a properly accredited official or by financial representatives.

Specimen applications furnished on request.

REQUIREMENTS FOR ORIGINAL LISTING.*

STOCK.

Every application for an original listing of capital stock shall recite:

A. Title of corporation.

B. (1) Date of organization; (2) name of state authorizing incorporation.

C. (1) Duration of charter; (2) and of charters of constituent, subsidiary, owned or controlled companies.

D. (1) History of corporation; (2) if a consolidation, merger, or reorganization, history of predecessor and constituent, subsidiary, owned or controlled companies or firms, showing (a) names, location and stock issues; (b) conditions leading to new organization.

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*For form of certificates eligible to be listed under this classification, list of papers to be furnished and agreements, see post pages 465-470.

E. (1) Charter rights; (2) nature of business, character and amount of annual output, number of employes; (3) special rights or privileges granted directors by charter or by-laws.

F. (1) Whether capital stock is full paid; (2) nonassessable; and (3) if personal liability attaches to shareholders.

G. (1) Issues, dividend rate and par value; (2) total amount of each, authorized and issued; (3) increases and authority therefor, including (a) action by stockholders; (b) by directors, and (c) by public authorities, etc.; (4) amount unissued; (a) options or contracts on same; (b) specific reservation for conversion.

H. If preferred stock; (1) whether cumulative or noncumulative; (2) preferences, including (a) voting power; (b) dividends; (c) distribution of assets on dissolution or merger; (d) redemption.

I. Voting power of obligations of debt.

J. (1) Dividends heretofore paid; (2) by predecessor or constituent, subsidiary, owned or controlled companies.

K. Description of property (1) owned in fee; (2) controlled; (3) leases; (4) franchises; (5) location, nature and acreage; (6) railroads, mileage completed, operated and contemplated and trackage rights; (7) traffic agreements; (8) equipment; (9) character of buildings and construction; (10) timber, fuel or mining lands, water-rights (see paragraphs T to Z, below).

L. (1) Purpose of issue; (2) application of proceeds; (3) amount of issue for securities, contracts, property, description and disposition of securities acquired; additional property acquired or to be acquired, with particulars, as required by paragraph K.

M. (1) Mortgage, and (2) other indebtedness; (a) date of issue; (b) maturity; (c) interest rate; (d) redemption by sinking fund or otherwise; (3) similar information regarding mortgage and all indebtedness of constituent, subsidiary, owned or controlled companies.

N. Other liabilities, joint and several; (1) guaranties;* (2) leases; (3) traffic agreements; (4) trackage agreements; (5) rentals; (6) car trusts, etc.; (7) terms of each, and provision for payment.

O. Fiscal year.

P. Financial statements; (1) earnings for preceding five years, if available; (2) income account of recent date for at least one year; (3) balance sheet of same date; (4) similar figures for predecessor, constituent, subsidiary, owned or controlled companies; (5) final balance sheet; (6) when reports published; (7) for corporations consolidated within a year, income account and balance sheet of all companies merged and balance sheet of applying corporation.

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*See No. 6 of page 465.

Q. Names of (1) officers; (2) directors (classified) with residence; (3) transfer agents, and (4) registrars, with addresses.

R. Location of principal and other offices of corporation.

S. Place and date of annual meeting.

In addition to the above, corporations which are owners of mines must recite:

T. Patented and unpatented claims, by numbers.

U. (1) A geological description of the country; (2) location and description of mineral and other lands; (3) ore bodies; (4) average value of ore; (5) character; and (6) proper methods of treatment.

V. History of prior workings, showing (1) results obtained; (2) production each year.

W. (1) Ore reserves compared with previous years; (2) estimate of engineer as to probable life of mines; (3) probabilities by further exploration.

X. (1) Provisions for smelting and concentration; (2) cost of (a) mining, (b) milling and smelting, (c) transportation; and (3) proximity of property to railway or other common carrier.

Y. Income account, (1) receipts; (2) expenditures; (3) disposition of income.

Z. Properties in process of development; if income account not available, what guaranties for working capital and for completion of development.

BONDS.*

An application for an original listing of bonds shall recite all information required for listing capital stock, and

A. (1) Amount, denominations and numbers; (2) full title; (3) amount authorized and outstanding, authority therefor, including (a) action by stockholders; (b) directors, and (c) public authorities, etc.; (4) whether bonds are coupon (registerable as to principal) or registered, interchangeable or exchangeable; (5) exchangeability or convertibility into other securities and terms.

B. (1) Date of issue and maturity; (2) interest rate; (3) places at, and dates for payment of interest and principal; (4) where registerable or transferable; (5) kind and standard of money, and options; (6) tax exemption; (7) whether redeemable or purchasable in whole or in part, showing (a) dates; (b) price; (c) duration of published notice; (d) disposition of redeemed or purchased bonds.

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*For form of certificates eligible to be listed under this classification, for list of papers to be furnished, and of agreements, see pages 465-470.

C. Mortgage or indenture provisions for (1) serial issues; (2) values in United States gold coin; (3) issuance in foreign languages, and (4) that the English version governs; (5) terms of exchangeability of bonds payable in foreign places for bonds payable in United States.

D. (1) Security—Mortgage, indenture of trust or other agreement; and, (2) liens; (a) properties covered; (b) mileage of railway lines; (c) buildings; (d) equipment; (e) securities; (f) rights; (g) privileges; (h) titles; (i) franchises; (j) leases, etc.; (3) other liens covering same or any part of same properties; (4) guaranty and terms.

E. (1) Names and addresses of trustees, and any unusual additions to or limitations of powers; (2) provision for declaration of principal due and payable in event of default of interest or other default, and waiver; (3) percentage of outstanding bonds controlling trustee.

F. Purpose of issue and application of proceeds, similar to that called for by paragraph L of the Requirements for Listing Stock.

G. Disposition of bonds refunded and mortgage securing same.

REQUIREMENTS FOR LISTING OF ADDITIONAL AMOUNTS.*

Refer to previous applications and last application by number and date; and recite:

A. Title of corporation and name of state authorizing incorporation.

B. (1) Securities applied for; (2) amounts authorized; (3) authority, including (a) action by stockholders; (b) by directors, and (c) by public authorities, etc.

C. (1) Dividends; (2) by constituent, subsidiary, owned or controlled companies, since previous application.

D. (1) Purposes of issue; (2) application of proceeds; (3) amount, description and disposition of securities exchanged for new issues; (4) additional property acquired or to be acquired, with particulars as required by paragraph K of the Requirements for Listing Stock.

E. Income account and balance sheet of recent date, with similar figures for constituent, subsidiary, owned or controlled companies.

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*For list of papers to be furnished, and of agreements, see pages 465-470.

F. Names of officials, location of offices, place and date of annual meeting, as covered by paragraphs Q, R and S of Requirements for Listing Stock.

(Note.)—Increases of capital stock are not eligible for listing until thirty days after notice of increase, or proposed increase, has been given the Exchange; increases of stock by conversion of listed bonds (of which notice shall be given the Exchange) may be immediately listed by the Committee and registration authorized.

REQUIREMENTS FOR LISTING OF CERTIFICATES OF DEPOSIT, VOTING TRUST CERTIFICATES, ETC.*

A. (1) Name of applicant; (2) amount applied for; (3) additional amounts to be listed; (4) depositary; (5) security deposited; (6) whether listed; (7) registrar.

(Applications for each class of deposited securities shall be separate and certificates issued of distinctive colors.)

B. (1) Date of agreement; (2) names of committee or voting trustees; (3) terms of trust and of succession; (4) powers and duties of committee, trustees or depositary.

C. Reasons for deposit.

D. (1) Duration of trust or deposit; (2) extensions or limitations; (3) final date of deposits; (4) provision for deposits without penalty for approximately thirty days after listing, or if no time limit for deposit of bonds, without penalty, is fixed, an agreement that approximately thirty days' notice of such limitation of time shall be published and given to the Stock Exchange; (5) date of presentation of plan; (6) provisions for dissent and withdrawal; (7) percentage necessary to adoption; (8) pro rata charges; (9) provisions for return of securities (or equivalent); (10) provision for payment of interest, dividends, etc.

E. Agreement to list definitive securities.

F. (Note.—On voting trust certificates, furnish similar information as covered by Requirements for Listing Stock.)

G. (Note.—Applications for listing certificates of deposit for securities not a delivery on the Stock Exchange must recite the facts.)

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*For form of certificates eligible to be listed under this classification, for list of papers to be furnished, and of agreements, see page 465-470.

PAPERS TO BE FILED WITH APPLICATIONS.

In addition to application for listing, the following papers must be filed:

For Stocks:

1. Seven copies of charter, with amendments to date, one copy attested by the secretary of state where incorporated or other proper public authority.
2. Seven copies of by-laws, with amendments, one copy attested by secretary of corporation.
3. Seven copies of leases and special agreements, one copy of each attested by secretary of corporation.
4. One copy of resolutions of stockholders and directors authorizing issue, each attested by secretary of corporation.
5. One copy of resolutions of board of directors or executive committee, attested by secretary of corporation, authorizing, by name, official to appear for listing securities.
6. Opinion of counsel (not an officer or director of the corporation) as to legality of (a) organization, (b) authorization, (c) issue, and (d) validity of securities.

   (The committee will not accept the opinion of an officer or director of an applying corporation nor of a firm in which the officer or director is a member, as counsel on any legal question affecting the corporation; nor will it accept the opinion of an officer or director of a guarantor corporation, nor of a firm in which the officer or director is a member, on any legal question affecting the issuance of guaranteed securities.)
7. Detailed distribution of securities.
8. One copy of resolution appointing transfer agent and registrar, attested by secretary of corporation.
9. Certificate of proper public authority for issue.
10. Certificate of registrar of amount of securities registered at date of application.
11. Report of a qualified engineer covering actual physical condition of property of recent date.
12. Map of property and contemplated extensions.
13. Specimens of all securities to be listed.

For Bonds:

14. All papers required for listing stocks and also seven copies of the mortgage or indenture, one copy (a) certified to by trustee; (b) with copies of all certificates of proper recording.
15. Trustees' certificate required on page 468.

16. If bonds are convertible into stock, certified copies of (a) action of stockholders, and (b) of directors; (c) of proper public authority, authorizing issue and reservation of stock specifically for conversion.
17. Certificate of disposition of securities redeemed or refunded.
18. Certificate as to collateral deposited.
19. Certified copy of release or satisfaction of underlying mortgages.

For Securities of Reorganized Corporations:

1. All papers required above for listing stocks or bonds, as the case may be.

(Opinion of counsel shall also state that proceedings have been in conformity with legal requirements, that title to property is vested in new corporation, and is free and clear from all liens and incumbrances, except as distinctly specified; and also as to equities of securities of predecessor corporation.)

2. Certified order of court confirming sale on foreclosure or other authority for reorganization.
3. Certified copy of plan of reorganization.
4. Income account; balance sheet at close of receivership, if available.
5. Balance sheet at date of organization.

For Additional Amounts:

1. Nos. 4, 5, 6, 7, 9, 10 of papers required for original listings.
2. Nos. 1, 2, 3, 8 and 11, of said papers for stock, if any changes have occurred therein since last listing.
3. Nos. 14, 15, 16, 17, 18 and 19, of said papers for bonds, if any changes have occurred therein since last listing.
4. Certified copy of proper public authority for increase.

For Certificates of Deposit, Voting Trust, etc.:

1. Papers required above for listing stocks or bonds.
2. Certified copies of any legal proceedings and court orders.
3. Seven copies of deposit or trust agreement, one certified to by proper authority.
4. Seven copies of circulars, issued by trustees or committee, one certified to by proper authority.
5. Amounts deposited.
6. Detailed distribution.

AGREEMENTS.

For incorporation in applications:

1. Not to dispose of its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of stock interests in other companies unless for retirement and cancelation, except under existing authority or on direct authorization of stockholders of the company holding the said companies.

2. To publish at least once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the corporation, a statement of its physical and financial condition, an income account covering the previous fiscal year, and a balance sheet showing assets and liabilities at the end of the year; also annually an income account and balance sheet of all constituent, subsidiary, owned or controlled companies.

3. To maintain, in accordance with the rules of the Exchange, a transfer office or agency in the borough of Manhattan, city of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the borough of Manhattan, city of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

4. Not to make any change in listed securities, of a transfer agency or of a registrar of its stock, or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the company.

5. To notify the Stock Exchange in the event of the issuance of any rights or subscriptions to or allotments of its securities and afford the holders of listed securities a proper period within which to record their interests after authorization, and that all rights, subscriptions or allotments shall be transferable, payable and deliverable in the borough of Manhattan, city of New York.

6. To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

7. To redeem preferred stock in accordance with the requirements of the Stock Exchange.

8. To notify the Stock Exchange if deposited collateral is changed or removed.

The committee recommends a date be fixed as record for dividends, allotment of rights and stockholders' meetings, without an extended closing of the transfer books.

Notice of rights, allotments, subscription privileges, etc., to bondholders and shareholders, should be as of a date after the authorization by stockholders.

Forms for warrants may be had on application.

TRUSTEES OF MORTGAGES.

The committee recommends that a trust company or other financial corporation be appointed trustee of mortgages, identures and deeds of trust; and when a state law requires the appointment of an individual as trustee, a trust company or other financial corporation be appointed as co-trustee.

Each mortgage, indenture or deed of trust should be represented by a separate trustee.

The committee will not accept as trustee:

(a) An officer or director of the issuing corporation;

(b) A corporation in which an officer of the issuing corporation is an executive officer.

The trustee shall present a certificate accepting the trust and certifying (1) securities are issued under the terms of the mortgage or indenture, giving the numbers and amount certified; (2) collateral is deposited; (3) disposition of prior obligations. For additional issues of bonds, the trustee must certify that (1) increase is in conformity with terms of mortgage or indenture; (2) additional collateral deposited, and (4) disposition of prior obligations.

The company and trustee shall notify the Stock Exchange of the holding, cancelation or retirement of securities, by redemption, through the operation of sinking fund or otherwise.

The trustee must notify the Stock Exchange if deposited collateral is changed or removed, and furnish list of collateral substituted.

A change of trustee shall not be made without the approval of the committee.

TRANSFER AND REGISTRY.

Every corporation whose securities are listed upon the Stock Exchange must, in accordance with the rules of the Exchange, maintain (a) a transfer office, and (b) a registry office, both in the borough of Manhattan, city of New York. The transfer agency and registrar shall not be identical, and both must be acceptable to the committee. A company can not act as registrar of its own stock.

Where a stock is transferred at the company's office, the transfer agent or transfer clerk shall be appointed by specific authority of the board of directors to countersign certificates, in said capacity, and shall be other than an officer who is authorized to sign certificates of stock.

The entire amount of the capital stock of a corporation listed upon the Stock Exchange must be directly transferable at the transfer office of the corporation in the borough of Manhattan, city of New York. When a corporation also makes transfer of its shares in other cities, such certificates shall be interchangeable, and identical in color and form, with the New York certificates, except as to names of transfer agent and registrar; and the combined amounts of stocks registered in all cities shall not exceed the amount authorized to be listed.

Interchangeable certificates must bear a legend reciting the right of transfer in New York and other cities.

The registrar must file with the secretary of the Stock Exchange an agreement to comply with the requirements in regard to registration and not to register any listed stock, or any increase thereof, until authorized by the committee.

Certifications of registry must be dated and signed by an authorized officer of the registrar.

A change in the form of a security, of a transfer agency, or of a registrar, shall not be made without the approval of the committee.

FORMS OF CERTIFICATES, ENGRAVING, ETC.

General Requirements.

(See Specific Requirements below.)

All securities for which listing upon the Exchange is requested, except as otherwise herein stated, must be engraved and printed in a manner satisfactory to this committee from at least two steel plates, by an engraving company whose work this committee is authorized by the governing committee to pass upon; the name of the engraving company must appear upon the face of all securities and also upon the face of coupons and the title panel of each bond. Securities must bear a vignette upon their face.

Said plates shall be: (1) A border and tint plate from which should be made a printing in color underlying important portions of the face printing; (2) a face plate containing the vignettes and descriptive or promissory portion of the document, which should be printed in black or in black mixed with a color. The combined effect of the impression from these plates must be as effectual security as possible against counterfeiting.

The printing of securities should be in distinctive colors, to make classes and denominations readily distinguishable.

All certificates, except as otherwise stated herein, must provide for transfer and for registration with dates; when a corporation also makes transfers of its shares in other cities, such certificates shall be identical in color and form, with the New York certificates, except as to names of transfer agent and registrar; interchangeable certificates must bear a legend reciting the right of transfer in New York and other cities.

The committee recommends that the text of securities shall provide for transfer, in person or by duly authorized attorney, upon surrender of the security properly indorsed.

A change in the form of a security, transfer agency, registrar or trustee of bonds, shall not be made without the approval of the committee.

The committee will object to any security upon which an impress is made by a hand stamp, except for a date or power of substitution.

Bonds.

(In addition to the General Requirements above outlined, the following apply specifically to bonds.)

The panel, coupons and denomination of bonds must be engraved and printed in a manner satisfactory to the committee; coupons must bear a vignette.

The text of bonds should recite conditions of issuance, terms of redemption, by sinking fund or otherwise, default, interchangeability or exchange ability of coupon and registered bonds, and conversion into other securities.

Registered bonds must carry a power of assignment in such form as the committee may approve.

The committee recommends that registered bonds be made interchangeable with coupon bonds.

Registered bonds interchangeable with coupon bonds and coupon bonds exchangeable for fully registered bonds shall bear a legend reciting the fact.

Coupon bonds issued in denominations of less than $1,000 should provide for exchangeability into coupon bonds of $1,000, the smaller bonds to bear a legend reciting such privilege.

Registered bonds made such by detaching coupon sheets are not eligible for listing.

Forms of legends will be furnished on application.

STOCK.

(In addition to the above General Requirements, the following apply specifically to stock certificates.)

The border and tint plate for one hundred share certificates of stock shall have said denomination engraved thereon in words and figures; the plates for smaller amounts shall bear some engraved device whereby the exact denomination of the certificate may be distinctly designated by perforation; also conspicuously upon the face the words, "Certificate for less than one hundred shares."

Certificates for common and preferred stock shall recite preferences of the preferred.

Certificates of stock should recite (1) ownership; (2) par value; (3) whether shares are full paid and (4) nonassessable; (5) terms of redemption; (6) preference as to dividends; (7) distribution of assets upon dissolution or merger; (8) voting power, or (9) other privilege, and must (10) bear the following legend:

This certificate is not valid until countersigned by the transfer agent and registered by the registrar.

The following form is required upon the reverse of a certificate of stock:

For value received .... hereby sell, assign and transfer unto...................... shares of the *capital stock represented by the within certificate and do hereby irrevocably constitute and appoint .... attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated ...., 19....

....

In presence of

....

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement, or any change whatever.

*On certificates without nominal or par value the word "capital" may be omitted.

*On certificates without nominal or par value the word "capital" may be omitted.

CERTIFICATES OF DEPOSIT, VOTING TRUST CERTIFICATES, ETC.

In addition to the General Requirements above outlined, certificates of deposit and voting trust certificates must conform in every particular to the Specific Requirements as to stock certificates; except that the descriptive portion of a certificate of deposit may be typed, satisfactorily to the committee.

Voting trust certificates or certificates of deposit for securities not a delivery on the Stock Exchange shall recite the facts.

TEMPORARY OR SUBSCRIPTION RECEIPTS.

Temporary or subscription receipts should conform to the General Requirements above outlined and to the Specific Requirements as to stock certificates, except that the text may be typed, satisfactorily to the committee.

REMOVALS OR SUSPENSIONS IN DEALINGS OF LISTED SECURITIES.

Whenever it shall appear that the outstanding amount of any security listed upon the Stock Exchange has become so reduced as to make inadvisable further dealings therein, this committee may direct that such security be taken from the list and further dealings therein prohibited.

The Governing Committee may suspend dealings in any listed securities or summarily remove any security from the list.

George W. Ely, Secretary. Wm. W. Heaton, Chairman.

FEDERAL ACTS REGULATING CORPORATIONS.

SHERMAN ANTI-TRUST ACT.

An act to protect trade and commerce against unlawful restraints and monopolies, approved July 2, 1890. 26 Stat. at L. 209.

Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Sec. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country.

ANTI-TRUST AMENDMENTS TO THE WILSON TARIFF ACT OF AUGUST 27, 1894

Sections 73-77.

(28 Stat. at L. 570.)

Sec. 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations, either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

Sec. 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 75. That whenever it shall appear to the court before which any proceedings under the seventy-fourth section of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this act, and being in the course of transportation from one state to another, or to or from a territory or the District of Columbia, shall be forfeited to the United States and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

Sec. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

AMENDMENTS TO SECTIONS 73-77 OF WILSON TARIFF ACT BY ACT OF FEBRUARY 12, 1913; STAT. AT L. 667.

An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled, "An Act to reduce taxation, to provide revenue for the Government, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section seventy-three and section seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," be and the same are hereby, amended to read as follows:

Sec. 73. That every combination, conspiracy, trust, agreement, or contract, is hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

Sec. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section seventy-three of this Act, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

THE FEDERAL TRADE COMMISSION ACT.

An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employes as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employes of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employes under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and other departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employes of the said bureau shall be transferred to and become clerks and employes of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

"Anti-trust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen.

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceedings, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon *certiorari* as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the anti-trust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and to return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. That the commission shall also have power—

(*a*) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(*b*) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(*c*) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the anti-trust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney-General it shall be its duty to make such investigation. It shall transmit to the Attorney-General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(*d*) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the anti-trust Acts by any corporation.

(*e*) Upon the application of the Attorney-General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the anti-trust Acts in order that the corporation may thereafter maintain its organization, management and conduct of business in accordance with law.

(*f*) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(*g*) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(*h*) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. That in any suit in equity brought by or under the direction of the Attorney-General as provided in the anti-trust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

Sec. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employes to the commission as he may direct.

Sec. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney-General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No persons shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided,* That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall wilfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall wilfully remove out of the jurisdiction of the United States, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall wilfully refuse to submit to the commission or to any of its authorized agents for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employe of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the anti-trust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said anti-trust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

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THE CLAYTON ACT.

An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "anti-trust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; and Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided,* That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the

District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided,* That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in *bona fide* transactions and not in restraint of trade.

Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the anti-trust laws to the effect that a defendant has violated said laws shall be *prima facie* evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided,* This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the anti-trust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

Sec. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carriers from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employe of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employe under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employe has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employe any private banker or any director or other officer or employe of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employe of such bank, banking association, or trust company may be a director or other officer or employe of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act, from being an officer or director or both an officer and director in one member bank.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employe of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or wilfully misapplies, or wilfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or wilfully or knowingly converts the same to his own use or to the use of another shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney-General.

If any common carrier shall violate this section it shall be fined not exceeding $25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor, and shall be fined not exceeding $5,000, or confined in jail not exceeding one year or both, in the discretion of the court.

Sec. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree affirming, modifying or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon *certiorari* as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the anti-trust Acts.

Complaints, orders and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary or other executive officer or a director of the corporation to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person; or (*c*) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 12. That any suit, action or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Sec. 13. That in any suit, action or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the anti-trust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. That whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

Sec. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 16. That any person, firm, corporation or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision or other jurisdiction of the Interstate Commerce Commission.

Sec. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 18. That except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employes and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employes, or between employers and employes, or between employes, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 21. That any person who shall wilfully disobey any lawful writ, process, order, rule, decree or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Sec. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided,* That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 23. That the evidence taken upon the trial of any person so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule decree or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Sec. 26. If any clause, sentence, paragraph or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

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TWO TYPICAL STATE ANTI-TRUST ACTS.

Illinois.

An Act to Provide for the Punishment of Persons, Copartnerships or Corporations Forming Pools, Trusts and Combines, and Mode of Procedure, and Rules of Evidence in such Cases. Laws of 1891, p. 78.

1. Trusts, Pools and Combines Legally Defined. If any corporation organized under the laws of this state or any other state or country for transacting or conducting any kind of business in this state or any partnership or individual or other association of persons whosoever shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, such corporation, partnership or individual or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to indictment and punishment as provided in this act.

2. Agreement to Place Combination in Hands of Trustee Unlawful. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employes, or the directors or stockholders of any corporation to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

3. Corporation Violating Act—Penalty. If a corporation or a company, firm or association shall be found guilty of a violation of this act, it shall be punished by a fine in any sum not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) for the first offense, and for the second offense not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000), and for the third offense not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000), and for every subsequent offense and conviction thereof shall be liable to a fine of fifteen thousand dollars ($15,000); provided, that in all cases under this act either party shall have the right of trial by jury.

4. Officers, Individuals, etc., Violating Act—Penalty. Any president, manager, director or other officer or agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual found guilty of a violation of the first section of this act, may be punished by a fine of not less than two hundred dollars ($200), nor to exceed one thousand dollars ($1,000), or be punished by confinement in the county jail not to exceed one year, or both, in the discretion of the court before which conviction may be had.

5. Agreement in Violation of Act Void. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

6. Purchaser in Violation of Act not Liable for Price. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act, shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

7. Fines—Verdict—Finding—Evidence. The fines hereinbefore provided for may be recovered in an action of debt, in the name of the people of the state of Illinois. If, upon the trial of any cause instituted under this act to recover the penalties as provided for in section 3, the jury shall find for the people, and that the defendant has been before convicted of a violation of the provisions of this act, they shall return such finding with their verdict, stating the number of times they find defendant so convicted, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant in accordance with said section 3; provided, that in all cases under the provisions of this act a preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for the people.

7a. Secretary to Inquire Whether Corporation has any Interest in Trust—Affidavit—Penalty. It shall be the duty of the secretary of state on or about the first day of September of each year to address to the president, secretary or treasurer of each incorporated company doing business in this state, whose post office address is known or may be ascertained, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be inclosed in said letter of inquiry as follows:

Affidavit.

STATE OF ILLINOIS, COUNTY OF ...., SS:

I, ... do solemnly swear that I am the .... (president, secretary, treasurer or director) of the corporation known and styled ...., duly incorporated under the laws of ...., on the .... day of ...., 19...., and now transacting or conducting business in the state of Illinois, and that I am duly authorized to represent said corporation in the making of this affidavit; and I do further solemnly swear that the said ...., known and styled as aforesaid, has not, since the .... day of .... (naming the day upon which this act takes effect), created, entered into or become a member of or party to, and was not, on the .... day of ...., nor at any day since that date, and is not now, a member of or party to, any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons to regulate or fix the price of any article of merchandise or commodity; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in the state; and that it has not issued and does not own any trust certificates, and for any corporation, agent, officer or employe or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sales of any articles of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

................,

(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a ...., within and for the county of ...., this .... day of ...., 19....

(Seal.) ....

And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the secretary of state shall certify that fact to the Attorney-General, whose duty it shall be to direct the state's attorney of the county wherein such corporation or corporations are located, and it is hereby made the duty of the state's attorney under the direction of the Attorney-General, at the earliest practicable moment, in the name of the people of the state of Illinois, and at the relation of the Attorney-General to proceed against such corporation for the recovery of a penalty of fifty dollars ($50) for each day after such refusal to make oath; or failure to make said oath within thirty days from the mailing of said notice; or the Attorney-General may, by any proper proceedings in a court of law or chancery, proceed, upon such failure or refusal, to forfeit such charter of such incorporated company or association incorporated under the general laws, or by any special law of this state, and to revoke the rights of any foreign corporation located herein to do business in this state; provided, however, that before any such suit or prosecution as contemplated by this act shall be instituted against any person, persons, copartnerships or corporations failing to file such affidavit within said thirty days from the mailing of such notice from the secretary of state, as aforesaid, it shall be the duty of the state's attorney of the county where such person, copartnership or corporation is located, to give such person, copartnership or corporation ten days' notice in writing of the intention to institute such suit or proceeding; and provided, further, that if such person, copartnership or corporation shall within such period of ten days make and file such affidavit in the office of the secretary of state, no penalty shall attach and no suit or proceeding shall be instituted against such person, copartnership or corporation.

7b. Secretary of State to Demand Affidavit from Corporation. It shall be the duty of the secretary of state, at any time, upon satisfactory evidence that any company or association of persons, duly incorporated under the laws of this or any other state, doing business in this state, has entered into any trust, combination or association in violation of the preceding sections of this act, to demand that it shall make the affidavit, as above set forth in this act, as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section 7a of this act; provided, that no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof. The secretary of state is hereby authorized and required to charge and collect of each corporation a fee of one dollar ($1) for receiving and filing the affidavit herein provided for, to be accounted for as other fees received by him. To enable the secretary of state to discharge the additional duties devolving upon him in the execution of this act there is hereby appropriated out of any funds in the state treasury not otherwise appropriated, or so much thereof as may be necessary, the sum of six thousand dollars ($6,000) per annum, payable to the secretary of state on his order upon proper vouchers as required by law; provided, that corporations organized under the building and loan and homestead laws of this state are excluded from the provisions of this act.

8. Act, How Enforced—Informer—Fines, to Whom Paid. It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the Attorney-General, to enforce the foregoing provisions of this act, and any prosecuting attorney of any county, securing a conviction under the provisions of this act, shall be entitled to such fee or salary as by law he is allowed for such prosecution. When there is conviction under this act, the informer shall be entitled to one-fifth of the fine recovered, which shall be paid him when the same is collected. All fines recovered under the provisions of this act shall be paid into the county treasurer of the county in which the suit is tried, by the person collecting the same, in the manner now provided by law, to be used for county purposes.

New Jersey.

An Act to Define Trusts, and to Provide for Criminal Penalties and Punishment of Corporations, Firms and Persons, and to Promote Free Competition in Commerce and all Classes of Business, Both Intrastate Business and Interstate Business, Engaged in and Carried on by or Through any Corporation, Firm or Person. Laws of 1913, c. 13.

1. Trusts Defined. A trust is a combination or agreement between corporations, firms or persons, any two or more of them, for the following purposes, and such trust is hereby declared to be illegal and indictable:

(1) To create or carry out restrictions in trade or to acquire a monopoly, either in intrastate or interstate business or commerce.

(2) To limit or reduce the production or increase the price of merchandise or of any commodity.

(3) To prevent competition in manufacturing, making, transporting, selling and purchasing of merchandise, produce or any commodity.

(4) To fix at any standard or figure, whereby its price to the public or consumer shall in any manner be controlled, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state or elsewhere.

(5) To make any agreement by which they, directly or indirectly, preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any article or commodity, either by pooling, withholding from the market or selling at a fixed price, or in any manner by which the price might be affected.

(6) To make any secret oral agreement or arrive at an understanding without express agreement by which they directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any article or commodity, either by pooling, withholding from the market, or selling at a fixed price, or in any other manner by which the price might be affected.

2. Penalty. Any person or corporation guilty of violating any of the provisions of this act shall be adjudged guilty of a misdemeanor, and punished accordingly on conviction.

3. Individual Liability of Directors. Whenever an incorporated company shall be guilty of the violation of any of the provisions of this act, the offense shall be deemed to be also that of the individual directors of such corporation, ordering or doing any of such prohibited acts and on conviction thereof they shall be punished accordingly.

4. Revocation of Charter. In addition to the punishment which may be imposed for the misdemeanor the charter of the offending corporation may be revoked in appropriate proceedings by the Attorney-General of this state.

5. Rights Preserved—Definition of Terms. Nothing in this act contained shall operate to deprive any corporation of any right or power given or granted by section forty-nine of the act en-

titled "An act concerning corporations (Revision of 1896)," and the words "article" and "commodities" in this act are to be construed as synonymous with natural products, manufactured products, and goods, wares and merchandise.

6. Validity of Sections. If any part or parts of this act shall be held to be invalid or unconstitutional the validity of the other parts hereof shall not thereby be affected or impaired.

A further supplement to the act entitled "An act for the punishment of crimes (Revision of 1898)." Laws of 1913.

1. Discrimination Unlawful. It shall be unlawful for any person, firm, corporation or association, engaged in the production, manufacture, distribution or sale of any commodity of general use, or rendering any service to the public, to discriminate between different persons, firms, associations or corporations, or different sections, communities or cities of the state by selling such commodity or rendering such service at a lower rate in one section, community or city than another, or at a different rate or price at a point away from that of production or manufacture as at the place of production or manufacture, after making due allowance for the difference, if any, in the grade, quality or quantity, and in the actual cost of transportation from the point of production or manufacture, if the effect or intent thereof is to establish or maintain a virtual monopoly, hindering competition or restriction of trade.

2. Penalty. Any person or corporation violating this act shall be guilty of a misdemeanor, and on conviction thereof shall be punished accordingly.

3. This act shall take effect immediately.

TYPICAL "BLUE SKY" OR INVESTMENT LAW.*

Michigan Act of 1915.

An Act to Prevent Fraud in the Sale and Disposition of Stocks, Bonds or Other Securities Sold or Offered for Sale Within the State of Michigan by any Dealer, Firm, Company, Association or Corporation, Foreign or Domestic, by Requiring an Inspection of Such Stocks, Bonds, or Other Securities and an Inspection of the Business of Such Persons, Firms, Companies, Associations or Corporations, Including Dealers and Agents, and Such Regulation and Supervision of the Business of Said Persons, Firms, Companies, Associations or Corporations, Including Dealers and Agents, as may be Necessary to Prevent Fraud in the Sale Within the State, of any Stocks, Bonds or Other Securities, and to Provide a Penalty for the Violation Thereof, and to Repeal Act Number One Hundred and Forty-Three of the Public Acts of Nineteen Hundred and Thirteen, Approved May Two, Nineteen Hundred and Thirteen, and all Other Acts or Parts of Acts Inconsistent Herewith. (P. A., 1915, Act 46.)

§ 1. There is hereby created a commission to be known as the Michigan Securities Commission and hereafter called in this act "the commission," whose duty it shall be to administer and provide for the enforcement of all the provisions of this act. Said commission shall consist of the Commissioner of the State Banking Department, who shall be president thereof; the State Treasurer of the State and the Attorney-General of the State, all of whom shall be members of said commission during their respective terms of office and any two of whom shall constitute a quorum. The said commission shall succeed the Michigan Securities Commission, created by act one hundred and forty-three of the Public Acts of nineteen hundred and thirteen, and as such successor shall receive all of the files, papers and property of said Michigan Securities Commission created by said act one hundred and forty-three of the Public Acts of nineteen hundred and thirteen. All proceedings pending before said Michigan Securities Commission created by said act one hundred and forty-three of the Public Acts of nineteen hundred and thirteen shall be continued by the commission created by this act; all actions, civil and criminal, pending under said act one hundred and forty-three of the Public Acts of nineteen hundred and thirteen shall be continued and completed thereunder. Said commission shall have its office in the capitol in the city of Lansing, in rooms to be provided by the Board of State Auditors, and all of its records shall be there kept. It shall hold a regular meeting on the first Friday of each month and may hold special meetings upon the call of the president. It shall keep a complete record of all its meetings, its accounts and the business it transacts. It shall appoint a secretary whose salary shall not exceed the sum of twenty-five hundred dollars per annum and shall have power to employ such other and further assistance as may be necessary to carry out the provisions of this act. All salaries fixed by it shall be subject to the approval of the Board of State Auditors. It shall make such rules and regulations as may be necessary to carry out the provisions of this act and may prepare all necessary blanks to be used in its proceedings and in the conduct of its business.

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*For a discussion of this class of legislation in England, Germany and America, see the article, Certified Securities, by Thomas Mulvey, 4 American Economic Review, 588.

§ 2. Every person, corporation, copartnership, company or association (except those exempt under the provisions of this act) organized, or which shall hereafter be organized in this state, whether incorporated or unincorporated, which shall either himself, themselves, or itself, or by or through others, sell or negotiate for the sale of any stocks, bonds or other securities issued by him, them or it within the state of Michigan, shall be known for the purposes of this act as a domestic investment company. Every such person, corporation, copartnership or association resident of or organized in any other state, territory or government, shall be known for the purposes of this act as a foreign investment company.

§ 3. The provisions of this act shall not apply to (a) securities of the United States, or any foreign government, or of any state or territory thereof or of any county, city, township, district or other public taxing subdivision of any state or territory of the United States, or any foreign government; (b) unsecured commercial paper; (c) securities of public or quasi public corporations, the issue of which securities are regulated by the Michigan Railroad Commission or by a public service commission or board of equal authority of any state or territory of the United States or securities senior thereto; (d) securities of state or national banks or trust companies, or building and loan associations of this state; (e) securities of any domestic corporation organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable or reformatory purposes; (f) mortgages upon real and personal property situated within this state where the entire mortgage is sold and transferred with the note or notes secured by such mortgages; (g) increase of stock sold and issued to stockholders, also stock dividends; (h) securities which are listed in any standard manual of information approved by said commission: Provided, however, That said commission shall have the power to call for additional and further information than that contained in such manuals with reference to any securities listed therein, and may, pending the filing of such information, suspend the sale of such securities, and also suspend, either temporarily or permanently, the sale of any securities listed in such manuals after a hearing upon notice to the issuer of such securities if said commission shall find that the sale of such securities would work a fraud upon the purchasers thereof; (i) all stocks, bonds and securities approved by the Michigan Securiities Commission created by act one hundred and forty-three of the Public Acts of nineteen hundred and thirteen.

§ 4. Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever in this state, any stocks, bonds or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the commission a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, stocks, bonds or other instruments which it proposes to make with, or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisements of its sale of stocks, bonds or other securities which statement shall also show the name and location and main office of the investment company; the names and addresses of its officers, and an itemized account of its financial condition and the amount of its assets and liabilities, and such other information touching its conditions and affairs as the commission may require. If such investment company shall be a copartnership or an unincorporated association it shall also file with the commission a copy of its articles of copartnership or association, and all other papers pertaining to its organization. If it be a corporation organized under the laws of Michigan it shall also file with the commission a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the commission a copy of the laws of the state, territory or government under which it exists or is incorporated, and also a copy of its charter and the certificate of the proper officer of such state showing that it is authorized to transact business there; and also copies of its constitution and by-laws, and all amendments of any of the above mentioned instruments which have been made, and all other papers pertaining to its organization. It shall also pay a filing fee of one-tenth of one per cent. upon the face value of the securities for the sale of which application is made: Provided, however, that such filing fee shall not be more than one hundred dollars, nor less than ten dollars.

§ 5. All of the above described papers shall be verified by the oath of a member of the copartnership or company, if it be a copartnership or company, and by the oath of a duly authorized officer, if it be a corporation or an unincorporated association. All such papers, however, as are recorded or are on file in any public office shall be further certified by the officer of whose records or archives they form a part, as being correct copies of such records or archives.

§ 6. Every foreign investment company before offering for sale any of its stocks, bonds or other securities in this state shall also file its irrevocable written consent that suits and actions may be commenced against it in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleadings authorized by the laws of this state, on the Commissioner of the State Banking Department, said consent stipulating and agreeing that such service of such process or pleadings on such commissioner shall be taken and held in all courts to be as valid and binding as if due service had been made upon the company itself, and said instrument containing such consent shall be authenticated by the seal of said foreign investment company, and by the acknowledged signature of a member of the copartnership or company, if it be a copartnership or company, or by the acknowledged signature of the president and secretary of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association, authorizing the secretary and president to execute the same. In case any process or pleadings mentioned in this act are served upon the Commissioner of the State Banking Department, it shall be by duplicate copies, one of which shall be filed in the office of the Michigan Securities Commission and another immediately forwarded by registered mail to the head office of the person or corporation against which said process or pleadings are directed.

§ 7. Said application shall be heard by the said commission at the next regular meeting after said application is filed (providing such filing shall precede such monthly meeting by twenty-four hours), or at a special or adjourned meeting of said commission, but if such application is heard at a special or adjourned meeting of said commission the secretary shall give such applicant at least two days' notice of such hearing. Said commission may have power to adjourn such hearings upon such applications from day to day or from time to time.

§ 8. The said commission shall have power to demand from any investment company seeking to come under the provisions of this act any further information other than such investment company is required to furnish under the provisions of this act which shall be necessary to the end that the commission may be put in possession of all facts and information necessary to qualify it to properly pass upon all questions that may come before it. It may make or have made under its direction a detailed examination of such investment company's property, business and affairs, which examination shall be at the expense of such investment company. It may cause an appraisal to be made, at the expense of said investment company, of the property of said investment company, including the value of patents, good will, promotion and intangible assets, and it may fix the amount of stocks, bonds and securities that shall be issued by any corporation, foreign or domestic, in payment for property, patents, good will, promotion and intangible assets at the value it shall find the same to be worth and may require that such stocks and securities so issued for such property, patents, good will, promotion and intangible assets shall be deposited in escrow under such terms as said commission may prescribe. And said commission may withhold its license to sell such stocks, bonds and securities if such corporation has issued stocks, bonds and securities in payment for property, patents, good will, promotion and intangible assets in excess of their value as found by said commission or if said stocks, bonds and securities are not deposited in escrow according to the terms fixed by such commission until such stocks, bonds and securities issued in payment for property, patents, good will, promotion and intangible assets in excess of the value so found by said commission have been surrendered to such corporation and cancelled by it, and until the said stock has been deposited in escrow under the terms prescribed by said commission.

§ 9. It shall be the duty of said commission to examine the statements and documents filed in its office by any investment company and the reports of any investigation conducted under the direction of said commission and to hear such applicant, and it shall have power to examine under oath any person interested or connected with such investment company, and if said commission finds that the proposed plan of business of said investment company, or that its proposed contracts, stocks, bonds or other securities are fraudulent or are of such a nature that the sale of such contracts, stocks, bonds or other securities would in the opinion of said commission work a fraud upon the purchaser, then said commission shall disapprove the sale of such proposed contracts, stocks, bonds or other securities and shall notify such investment company by registered mail of its findings and disapproval, and it shall be unlawful for such company to do any business in the way of selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever, of any such contracts, stocks, bonds and other securities in this state; and said contracts, stocks, bonds and other securities shall not be sold in this state. If, however, said commission shall not find the proposed plan of business of said investment company or that its proposed contracts, stocks, bonds or other securities are fraudulent or are of such a nature that the sale of such contracts, stocks, bonds or other securities would in the opinion of said commission work a fraud upon the purchaser thereof, then it shall approve the sale of such stocks in the State of Michigan and issue its certificate in substantially the following language:

"This is to certify that the .... has this date been given permission to sell $.......... of its .... stocks, bonds or securities within the State of Michigan. The commission does not recommend the purchase of this security.

Dated ....

IN WITNESS WHEREOF, I have hereunto affixed the corporate seal of the Michigan Securities Commission.

(Seal.) ....,

Secretary."

The words "The commission does not recommend the purchase of this security" shall be printed in type two sizes larger than any other part of said certificate, and in case said certificate or the fact that said commission has approved said security is printed or published in any circular, pamphlet or newspaper, the words "The commission does not recommend the purchase of this security" shall be printed in type two sizes larger than the type in which the statement of fact that such security has been approved by said commission appears.

§ 10. Any person, firm, copartnership or association, whether domestic or foreign, not the issuer, who shall in this state sell or offer for sale any of the stocks, bonds or other securities issued by any foreign or domestic investment company, except the securities specifically exempted in this act, or who shall by advertisement or otherwise profess to engage in the business of selling or offering for sale such securities, shall be deemed to be a "dealer" in such securities within the meaning of this act, and no dealer within the meaning of this act shall sell or offer for sale any such securities or profess the business of selling or offering for sale such securities unless and until he shall have filed a list of the same in the office of the Michigan Securities Commission as in this act provided. The term "dealer" shall not include an owner nor issuer of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature, nor one who in a trust capacity created by law lawfully sells any securities embraced within such trust.

§ 11. Any dealer desiring to sell or offer for sale within this state any stocks, bonds or other securities not exempted under the terms of this act, shall first register with the Michigan Securities Commission and shall furnish said commission, upon oath, in such form as the commission shall prescribe, the following information, to wit: The dealer's name, residence and business address, the general character of the securities to be dealt in, the place or places where the business is to be conducted within this state, and where the business in this state is not to be conducted by the dealer in person, then the names and addresses of all the persons in charge thereof. Said dealer shall pay to the commission a fee of fifty dollars and shall furnish said commission with such other information in addition to that above specified as said commission shall deem necessary in order to thoroughly acquaint such commission with the character of the business of said dealer. All authorized agents of any dealer shall be registered with the commission and the name of any agent shall be stricken from the register by the commission upon the written request of the dealer and additional agents may be registered by the commission upon like request of the dealer: Provided, That no agent shall act as such until his name and address shall be registered with the commission. If the dealer shall be a non-resident of this state or a corporation other than a domestic corporation, he shall at the time he registers with the commission file with the commission a written duly authenticated appointment of the Commissioner of the State Banking Department of this state as his or its agent in

Michigan upon whom process or pleadings may be served for and on behalf of the dealer, which appointment shall be irrevocable. Upon compliance by such dealer with the provisions of this act the said commission shall issue to such dealer a license under the seal of said commission and signed by the secretary thereof, which said license shall be good until revoked by said commission for good cause upon notice to such dealer and a hearing duly had: *Provided further,* That said commission shall issue the license provided for in this section to each dealer registered under act one hundred and forty-three of the Public Acts of nineteen hundred and thirteen upon the payment to said commission of the sum of one dollar, and shall also issue licenses under the terms of this act and upon the payment of the sum of twenty-five cents to such agents as were registered under the provisions of said act number one hundred and forty-three of the Public Acts of nineteen hundred and thirteen.

§ 12. In addition to the filing and examination fees herein provided for to be paid by investment companies and dealers, there shall be charged and collected by said commission a fee of three dollars for the registration and authorization of each agent of any such investment company or dealer and all the fees and charges collected by the commission shall be turned into the State Treasury and are hereby re-appropriated to the commission towards paying the expenses of enforcing this act. The expenses of said commission shall not, however, be limited to the moneys received by it, but it shall have the power to incur all expenses it finds necessary in enforcing the provisions hereof.

§ 13. General accounts of every investment company, domestic or foreign, shall be kept in a businesslike and intelligent manner and in sufficient detail that said commission can ascertain at any time its financial condition, and the books of accounts shall at all times during business hours, except on Sundays and legal holidays, be open to stockholders and investors in said company, and the said commission, or its duly authorized representatives, and all such investment companies, shall be subject to examination by said commission or any member thereof, or the clerks, accountants or examiners thereof, at any time said commission shall deem it advisable, and in the same manner as is now provided for the examination of state banks, and such investment company shall pay a fee for each of such examinations of not to exceed seven dollars for each day or fraction thereof that any member of said commission, clerk, accountant or examiner is absent from the capitol building for the purpose of making such examination and shall also pay the actual traveling and hotel expenses of the person or persons making such examination and the failure or refusal of any investment company to pay such fees, upon demand of such commission, clerk, accountant or examiner, while making such examination shall work a forfeiture of the right of such investment company to sell or offer for sale any of its contracts, stocks, bonds or other securities in this state. In case of a preliminary examination of any investment company by said commission for the purpose of the ascertainment by said commission as to whether said company shall be permitted to come under the provisions of this act, the fee for such examination shall be the same as in this section provided, and in case it shall be made to appear to the commission from the examination of said investment company after said investment company has been authorized to sell its stocks, bonds and securities that the further sale of said stocks, bonds and other securities would work a fraud upon the purchaser, then said commission may make an order revoking the license of said investment company to sell its stocks, bonds and securities upon notice duly given and a hearing duly had and may, pending such hearing, suspend the right of said investment company to sell its stocks, bonds and securities.

§ 14. It shall be unlawful for any investment company or dealer, or representative thereof, either directly or indirectly, to sell or cause to be sold, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatever in this state, any stocks, bonds or other securities (except as expressly exempted herein), unless and until said commission has approved thereof and issued its certificate in accordance with the provisions of this act, nor shall it be lawful for any such investment company to transact, business on any other plan than that set forth in the statements and papers required to be filed by virtue of the provisions of this act or the rules of the commission. It shall be unlawful for any investment company or dealer, or its or his agents, to issue, circulate or deliver any advertisement, pamphlet, circular, prospectus or other document in regard to its stocks, bonds or other securities in the State of Michigan differing in any way from the copy filed with said commission as provided by this act. It shall be unlawful for any newspaper published in the State of Michigan to advertise the sale of any stocks, bonds or securities which have not been approved by said commission or which are not exempt under the provisions of this act.

§ 15. No dealer within the meaning of this act shall sell or offer for sale within this state any of the stocks, bonds or other securities of any investment company unless such investment company shall have fully complied with all the provisions of this act, nor until said dealer shall have registered with the commission, under the terms of this act: *Provided, however,* That should any dealer desire to sell or offer for sale within this state the stocks, bonds or other securities of an investment company, which has not itself complied with the provisions of this act, said dealer shall make application to the said commission for license as hereinbefore provided for applications by investment companies and shall pay the same fee required to be paid by said investment company.

§ 16. All information obtained by the commission with reference to any securities and all records of the commission relating thereto shall be open to examination by the public, and it shall be the duty of the commission to preserve such information, and so classify and arrange it as to facilitate examination. The commission may from time to time issue in pamphlet form, or by means of newspaper advertisements or otherwise, any and all information regarding any and all contracts, stocks, bonds or other securities sold or offered for sale within this state which it deems would be of public interest or advantage. All fees herein provided for shall be paid into the State Treasury by the commission upon receipt thereof.

§ 17. Nothing in this act shall be construed to repeal or modify any laws giving the State Banking Department of this state control of and supervision over state banks and the business of banking in this state, nor shall any part of this act be construed to repeal or modify laws giving the Commissioner of Insurance in this state control of and supervision over the business of insurance in this state, and those engaged therein.

§ 18. The commission shall adopt a seal with the words "Michigan Securities Commission," and such design as the commission may prescribe, engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission certified by the secretary thereof and authenticated by the seal of said Michigan Securities Commission shall be received in evidence in all courts equally and with like effect as the originals.

§ 19. Any person who shall knowingly or wilfully subscribe to or make or cause to be made any false statement or false entry in any book of any investment company, or who shall exhibit any false paper with the intention or for the purpose of deceiving any person authorized to examine into the affairs of said investment company or shall make or publish any false statement of the financial condition of said investment company or false statement relating to the contracts, stocks, bonds or other securities by it issued and offered for sale, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter provided.

§ 20. The commission shall provide for the furnishing to those who may apply therefor, of any information regarding any investment company or its affairs, which is on file in its office, said commission to charge therefor approximately the cost of preparing such information. All fees collected under the provisions of this act shall be paid into the state treasury on the first day of each and every calendar month, and a complete record of all fees received shall be kept in the office of the commission, and all said fees so turned into the state treasury are hereby reappropriated to the commission for the purpose of paying salaries and expenses necessary for carrying this act into effect. The members of the commission shall perform the duties imposed upon them, and each of them, by the terms of this act, without other compensation than the salaries paid them by the state, but they shall be entitled to receive their actual expenses incurred when absent from the seat of government on business of the commission.

§ 21. Every investment company, domestic or foreign, shall file during the month of January in each and every year a detailed statement in such form and containing such information as the commission shall require showing its condition at the close of business on the preceding December thirty-first, and shall at the same time pay a filing fee therefor of one dollar.

§ 22. The Supreme Court upon petition of any person aggrieved may review by *certiorari* any final order of determination of the commission. The issuance of the writ shall not, however, unless specifically ordered by the court, operate as a stay of proceedings.

§ 23. Any person or persons who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars, or shall be imprisoned in the county jail for not more than one year, or both such fine and imprisonment in the discretion of the court.

§ 24. Should the courts of this state declare any section or provision of this act unconstitutional or unauthorized, or in conflict with any other section or provision of this act, then such decision shall affect only the section or provision so declared to be unconstitutional or unauthorized and shall not affect any other section or part of this act.

§ 25. Act one hundred and forty-three of the Public Acts of nineteen hundred and thirteen and all acts or parts of acts in conflict herewith are hereby repealed.

Approved April 9, 1915.

The act of 1913 (No. 143) was declared to be unconstitutional in 210 Fed. 173.

See also L. 1903, Act No. 60 (Howell's Statutes, §§ 9657 to 9666, inclusive), and L. 1903, Act No. 166 (§§ 9667 to 9674).

FEDERAL CORPORATION TAX LAWS.

INCOME TAX ON CORPORATIONS.

Sec. 10.* That there shall be levied, assessed, collected and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized or existing under the laws of any foreign country, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations or insurance companies whose net income is taxable under this title: *Provided*, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association or insurance company, made of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

The foregoing tax rate shall apply to the total net income received by every taxable corporation, joint-stock company or association or insurance company in the calendar year nineteen hundred and sixteen, and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rate shall apply to the proportion of the total net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, which the period between January first, nineteen hundred and sixteen, and the end of such fiscal year bears to the whole of such fiscal year, and the rate fixed in Section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," shall apply to the remaining portion of the total net income returned for such fiscal year.

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*Previous sections apply to income tax on individuals.

For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition by a corporation, joint-stock company or association, or insurance company, of property, real, personal or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived or loss sustained.

Conditional and Other Exemptions.

Sec. 11. (a) That there shall not be taxed under this title any income received by any—

First. Labor, agricultural or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

Fourth. Domestic building and loan association and co-operative banks without capital stock organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers' or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations as provided in section twenty-six of the Act approved July seventeenth, nineteen hundred and sixteen, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Fourteenth. Joint stock land banks as to income derived from bonds or debentures of other joint stock land banks or any Federal land bank belonging to such joint stock land bank.

(b) There shall not be taxed under this title any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That whenever any State, Territory or the District of Columbia, or any political subdivision of a State or Territory has, prior to the passage of this title, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory or the District of

Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this title upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

DEDUCTIONS.

Sec. 12. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources—

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the secretary of the treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources, plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: *Provided*, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: *Provided further*, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: *Provided further*, That in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.

(b) In the case of a corporation, joint-stock company or association or insurance company, organized, authorized or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources within the United States—

First. All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained within the year in business or trade conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) and in the case (a) of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the secretary of the treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources, plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States:

Provided, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

(c) In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

RETURNS.

Sec. 13. (a) The tax shall be computed upon the net income, as thus ascertained, received within each preceding calendar year ending December thirty-first: *Provided,* That any corporation, joint-stock company or association, or insurance company, subject to this tax, may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the first day of March of the year in which its return would be filed if made upon the basis of the calendar year;

(b) Every corporation, joint-stock company or association, or insurance company, subject to the tax herein imposed, shall, on or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, or, if it has designated a fiscal year for the computation of its tax, then within sixty days after the close of such fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, and the close of each such fiscal year thereafter, render a true and accurate return of its annual net income in the manner and form to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and containing such facts, data and information as are appropriate and in the opinion of the commissioner necessary to determine the correctness of the net income returned and to carry out the provisions of this title. The return shall be sworn to by the president, vice-president or other principal officer, and by the treasurer or assistant treasurer. The return shall be made to the collector of the district in which is located the principal office of the corporation, company or association, where are kept its books of account and other data from which the return is prepared, or in the case of a foreign corporation, company or association, to the collector of the district in which is located its principal place of business in the United States, or if it have no principal place of business, office or agency in the United States, then to the collector of internal revenue at Baltimore, Maryland. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue;

(c) In cases wherein receivers, trustees in bankruptcy or assignees are operating the property or business of corporations, joint-stock companies or associations or insurance companies, subject to tax imposed by this title, such receivers, trustees or assignees shall make returns of net income as and for such corporations, joint-stock companies or associations and insurance companies, in the same manner and form as such organizations are hereinbefore required to make returns, and any income tax due on the basis of such returns made by receivers, trustees or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody and control;

(d) A corporation, joint-stock company or association or insurance company, keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect its income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the secretary of the treasury, make its return upon the basis upon which its accounts are kept, in which case the tax shall be computed upon its income as so returned;

(e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations and insurance companies by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies or associations and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein;

(f) Likewise, all the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to income derived from dividends upon the capital stock or from the net earnings of domestic or other resident corporations, joint-stock companies or associations and insurance companies by nonresident alien companies, corporations, joint-stock companies or associations and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein.

Assessment and Administration.

Sec. 14. (a) All assessments shall be made and the several corporations, joint-stock companies or associations and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the fifteenth day of June: *Provided*, That every corporation, joint-stock company or association and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and five days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of erroneous, false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this title or by existing law; and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, or after one hundred and five days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due: *Provided,* That upon the examination of any return of income made pursuant to this title, the Act of August fifth, nineteen hundred and nine, entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes," and the Act of October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof, notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes;

(b) When the assessment shall be made, as provided in this title, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided,* That any and all such returns shall be open to inspection only upon the order of the president, under rules and regulations to be prescribed by the secretary of the treasury and approved by the president: *Provided further,* That the proper officers of any state imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company or association or insurance company, at such times and in such manner as the secretary of the treasury may prescribe;

(c) If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association or insurance company shall be liable to a penalty of not exceeding $10,000: *Provided,* That the Commissioner of Internal Revenue shall have authority, in the case of either corporations or individuals, to grant a reasonable extension of time in meritorious cases, as he may deem proper.

(d) That section thirty-two hundred and twenty-five of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"Sec. 3225. When a second assessment is made in case of any list, statement or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no tax collector under such assessment shall be recovered by any suit unless it is proved that the said list, statement or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil or gas wells and mines."

Special Excise Taxes.

Sec. 407. That on and after January first, nineteen hundred and seventeen, special taxes shall be, and hereby are, imposed annually, as follows, that is to say:

Every corporation, joint-stock company or association, now or hereafter organized in the United States for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States, or any State or Territory of the United States, shall pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association or insurance company, equivalent to 50 cents for each $1,000 of the fair value of its capital stock and in estimating the value of capital stock the surplus and undivided profits shall be included: *Provided*, That in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the fair average value of the capital stock for the preceding year: *Provided*, That for the purpose of this tax an exemption of $99,000 shall be allowed from the capital stock as defined in this paragraph of each corporation, joint-stock company or association, or insurance company: *Provided further*, That a corporation, joint-stock company or association or insurance company actually paying the tax imposed by section three hundred and one of Title III of this Act shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company or association or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title 1, of this Act.

Every corporation, joint-stock company or association or insurance company, now or hereafter organized for profit under the laws of any foreign country and engaged in business in the United States shall pay annually a special excise tax with respect to the carrying on or doing business in the United States by such corporation, joint-stock company or association or insurance company equivalent to 50 cents for each $1,000 of the capital actually invested in the transactions of its business in the United States: *Provided*, That in the case of insurance companies such deposits or reserve funds as they are required by law or contract to maintain or hold in the United States for the protection of or payment to or apportionment among policyholders, shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the average amount of capital so invested during the preceding year: *Provided*, That for the purpose of this tax an exemption from the amount of capital so invested shall be allowed equal to such proportion of $99,000 as the amount so invested bears to the total amount invested in the transaction of business in the United States or elsewhere: *Provided further*, That this exemption shall be allowed only if such corporation, joint-stock company or association or insurance company makes return to the Commissioner of Internal Revenue, under regulations prescribed by him, with the approval of the secretary of the treasury, of the amount of capital invested in the transaction of business outside the United States: *And provided further*, That a corporation, joint-stock company or association or insurance company actually paying the tax imposed by section three hundred and one of Title III of this Act, shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company or association or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this Act.

THE UNIFORM STOCK TRANSFER ACT.*

Section 1. How Title to Certificates and Shares may be Transferred. Title to a certificate and to the shares represented thereby shall be transferred only—

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney, to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

Sec. 2. Powers of those Lacking Full Legal Capacity and Fiduciaries not Enlarged. Nothing in this act shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney.

Sec. 3. Corporation not Forbidden to Treat Registered Holder as Owner. Nothing in this act shall be construed as forbidding a corporation—

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

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*The Uniform Stock Transfer Act has been enacted in Alaska, Louisiana, Maryland, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Rhode Island and Wisconsin. The text of the act printed above is that of Massachusetts. In the other states the text is substantially the same, although there are some slight variations in language and in the numbering of the sections.

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares.

Sec. 4. Title Derived from Certificate Extinguishes Title Derived from a Separate Document. The title of a transferee of the certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

Sec. 5. Who May Deliver a Certificate. The delivery of a certificate to transfer title in accordance with the provisions of section 1 shall be effectual, except as provided in section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

Sec. 6. Indorsement Effectual in Spite of Fraud, Duress, Mistake, Revocation, Death, Incapacity or Lack of Consideration or Authority. The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby shall be effectual, except as provided in section 7, though the indorser or transferor—

(a) Was induced by fraud, duress or mistake, to make the indorsement or delivery, or

(b) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) Has received no consideration.

Sec. 7. Rescission of Transfer. If the indorsement of a certificate—

(a) Was procured by fraud or duress, or

(b) Was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of the certificate was made—

(c) Without authority from the owner, or

(d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless—

(1) The certificate has been transferred to a purchaser for value

in good faith without notice of any facts making the transfer wrongful, or

(2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof, and pending litigation, may enjoin the further transfer of the certificate or impound it.

Sec. 8. Rescission of Transfer of Certificate does not Invalidate Subsequent Transfer by Transferee in Possession. Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

Sec. 9. Delivery of Unindorsed Certificate Imposes Obligation to Indorse. The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

Sec. 10. Ineffectual Attempt to Transfer Amounts to a Promise to Transfer. An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

Sec. 11. Warranties on Sale of Certificate. A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants—

(a) That the certificate is genuine,

(b) That he has a legal right to transfer it, and

(c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

Sec. 12. No Warranty Implied from Accepting Payment of a Debt. A mortgagee, pledgee or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not, by so doing, be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

Sec. 13. No Attachment or Levy Upon Shares Unless Certificate Surrendered or Transfer Enjoined. No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

Sec. 14. Creditor's Remedies to Reach Certificate. A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

Sec. 15. There Shall be no Lien or Restriction Unless Indicated on Certificate. There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation, and there shall be no restriction upon the transfer of shares so represented by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

Sec. 16. Alteration of Certificate does not Divest Title to Shares. The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

Sec. 17. Lost or Destroyed Certificate. Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with a sufficient surety to be approved by the court to protect the corporation or any persons injured by the issue of a new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees. The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

Sec. 18. Rule for Cases not Provided for by this Act. In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentative, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern.

Sec. 19. Interpretation shall give Effect to Purpose of Uniformity. This act shall be so interpreted and construed in such manner as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 20. Definition of Indorsement. A certificate shall be deemed to be indorsed when an assignment or a power of attorney to sell, assign or transfer the certificate or shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In either of such cases a certificate shall be deemed to be indorsed though it has not been delivered.

Sec. 21. Definition of Person Appearing to be the Owner of Certificate. The person to whom a certificate was originally issued shall be deemed to be the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person shall be deemed to be the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

Sec. 22. Other Definitions. (1) In this act, unless the context or subject-matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" mean a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"State" includes State, Territory, District and Insular possessions of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

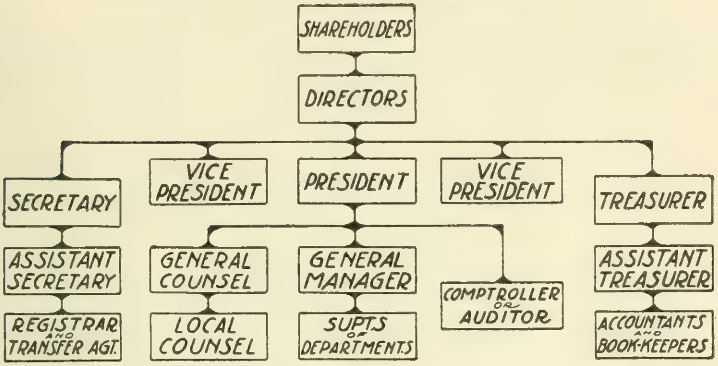
Sec. 23. Act does not Apply to Existing Certificates. The provisions of this act shall apply only to certificates issued after the act takes effect.

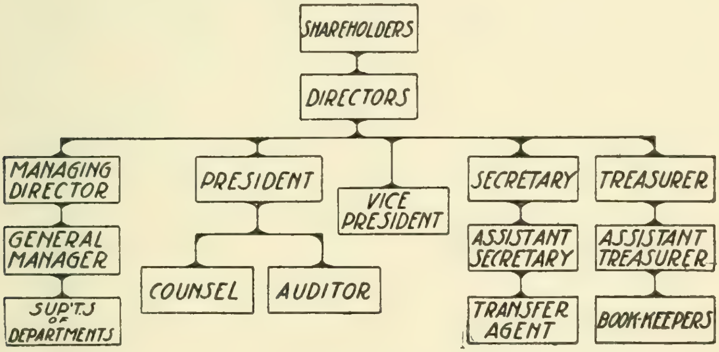
Sec. 24. Inconsistent Legislation Repealed. All acts or parts of acts inconsistent herewith are hereby repealed.

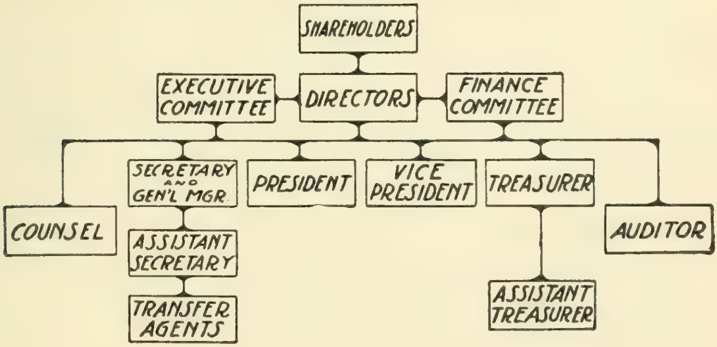
Sec. 25. Name of Act. This act may be cited as the Uniform Stock Transfer Act.

Sec. 26. Time When the Act Takes Effect. This act shall take effect upon its passage.

CHARTS SHOWING POSSIBLE DISTRIBUTION OF OFFICERS, ETC., AND THEIR RESPONSIBILITY







HOW A GREAT ENGINEERING COMPANY DISTRIBUTES THE MANAGEMENT OF ITS BUSINESS

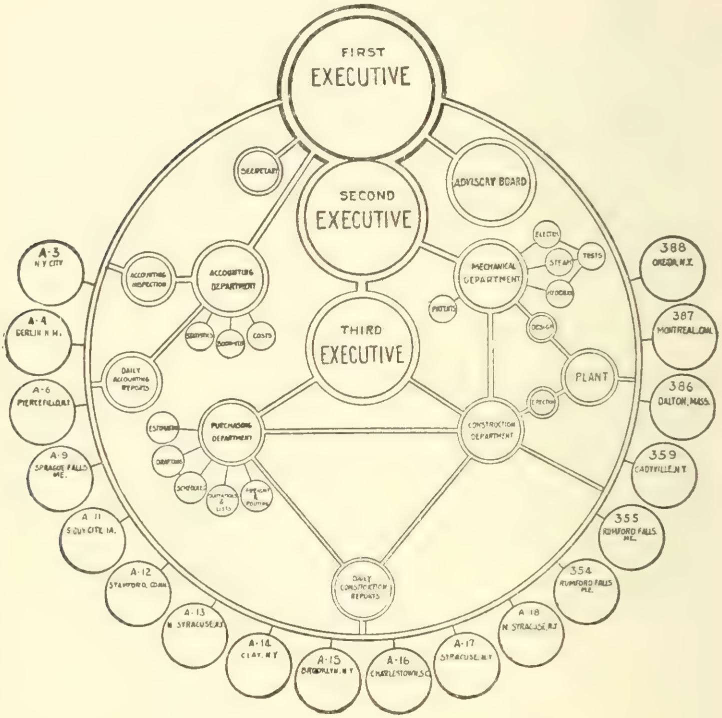


Chart of responsibilities of officers and department heads. The small circles outside the largest circle indicate the location of the company's contracts.

—From World's Work.

TABLE OF INCORPORATION FEES IN THE STATES HAVING LIBERAL CORPORATION LAWS*

	$10,000	$25,000	$50,000	$100,000	$150,000	$200,000	$250,000	$500,000	$1,000,000	$5,000,000	Filing and Other Fees (Approximately)
Arizona	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$30.00
Connecticut	25.00	25.00	25.00	50.00	75.00	100.00	125.00	250.00	500.00	2,500.00	10.00
Delaware	10.00	10.00	10.00	10.00	15.00	20.00	25.00	50.00	100.00	350.00	10.00
Maine	10.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	100.00	500.00	15.00
Massachusetts	25.00	25.00	25.00	50.00	75.00	100.00	125.00	250.00	500.00	2,500.00	No
Nevada	25.00	25.00	25.00	25.00	25.00	25.00	25.00	50.00	100.00	500.00	
New Jersey	25.00	25.00	25.00	25.00	30.00	40.00	50.00	100.00	200.00	1,000.00	10.00
New York	5.00	12.50	25.00	50.00	75.00	100.00	125.00	250.00	500.00	2,500.00	15.00
South Dakota	10.00	10.00	15.00	15.00	20.00	20.00	20.00	20.00	30.00	110.00	3.00
Virginia	10.00	10.00	10.00	20.00	30.00	40.00	50.00	100.00	200.00	600.00	8.00
†West Virginia	15.00	20.00	25.00	50.00	60.00	75.00	90.00	120.00	170.00	410.00	18.00
District of Columbia	No Organization Tax. Recording fees, etc., are $25.00 and up.										

*To compute the total cost of incorporating, add to the organization fees the filing and other state and county fees, and attorney's fees for preparing articles of incorporation.

†This is an annual tax.

TABLE OF INCORPORATION FEES OF OTHER STATES AND TERRITORIES

	$2,000	$5,000	$25,000	$50,000	$100,000	$200,000	$500,000	$1,000,000	$5,000,000	Sundry Fees (Approximate)
†Alabama	$5.00	$5.00	$25.00	$50.00	$100.00	$200.00	$500.00	$1,000.00	$5,000.00	$10.00
†Alaska	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	5.00
†Arkansas	25.00	25.00	40.00	65.00	115.00	215.00	515.00	1,015.00	5,015.00	7.00
California	15.00	15.00	15.00	25.00	50.00	50.00	75.00	100.00	500.00	Small
†Colorado	20.00	20.00	20.00	20.00	30.00	50.00	110.00	210.00	1,010.00	7.50
†Florida	5.00	10.00	50.00	100.00	200.00	250.00	250.00	250.00	250.00	Small (Publish articles)
*Georgia	10.00	10.00	20.00	30.00	30.00	50.00	100.00	150.00	200.00	$20.00
‡Hawaii	25.00	25.00	25.00	25.00	25.00	40.00	100.00	200.00	500.00	Small
†Idaho	10.00	10.00	10.00	20.00	40.00	60.00	60.00	100.00	150.00	10.00
Illinois	30.00	50.00	70.00	95.00	145.00	245.00	545.00	1,045.00	5,045.00	5.00
Indiana	10.00	10.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	5.00
Iowa	25.00	25.00	40.00	65.00	115.00	215.00	515.00	1,015.00	5,015.00	Small
†Kansas	27.00	30.00	50.00	75.00	125.00	175.00	325.00	525.00	1,325.00	Small
†Kentucky	2.00	5.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	Small
Louisiana	No organization tax.									$25.00 to $100.00
Maryland	20.00	20.00	20.00	20.00	20.00	40.00	100.00	200.00	1,000.00	$15.00
Michigan	5.00	5.00	12.50	25.00	50.00	100.00	250.00	500.00	2,500.00	8.00
Minnesota	50.00	50.00	50.00	50.00	75.00	125.00	275.00	525.00	2,525.00	Small
Mississippi	20.00	20.00	40.00	60.00	100.00	200.00	250.00	250.00	250.00	Small
Missouri	50.00	50.00	50.00	50.00	75.00	125.00	275.00	525.00	2,525.00	Small
Montana	20.00	20.00	20.00	25.00	50.00	90.00	185.00	285.00	685.00	10.00
Nebraska	10.00	10.00	20.00	50.00	50.00	150.00	300.00	500.00	2,500.00	7.00
New Hampshire	10.00	10.00	10.00	25.00	25.00	50.00	50.00	100.00	200.00	Small
New Mexico	25.00	25.00	25.00	25.00	25.00	25.00	50.00	100.00	500.00	Small (Publish articles)
North Carolina	25.00	25.00	25.00	25.00	25.00	40.00	100.00	200.00	1,000.00	7.00
North Dakota	25.00	25.00	25.00	50.00	75.00	125.00	275.00	525.00	2,525.00	8.00
Ohio	10.00	10.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	10.00
†Oklahoma	3.00	5.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	4.00
†Oregon	10.00	10.00	20.00	25.00	35.00	45.00	60.00	75.00	375.00	10.00
Pennsylvania	6.66	16.66	83.33	166.66	333.33	666.66	1,666.66	3,333.33	16,666.66	40.00
Philippine Islands	25 pesos	25 pesos	25 pesos	50 pesos	75 pesos	100 pesos	200 pesos	250 pesos	300 pesos	Small
Porto Rico	25.00	25.00	25.00	25.00	25.00	30.00	75.00	150.00	500.00	Small
Rhode Island	100.00	100.00	100.00	100.00	100.00	200.00	500.00	1,000.00	5,000.00	3.00
South Carolina	2.00	5.00	25.00	50.00	100.00	150.00	300.00	550.00	1,550.00	12.50
†Tennessee	2.00	5.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	10.00
Texas	50.00	50.00	70.00	90.00	140.00	240.00	540.00	1,040.00	5,040.00	Small
†Utah	0.50	1.25	6.25	12.50	25.00	50.00	125.00	250.00	1,250.00	Small
†‡‡Vermont	10.00	10.00	50.00	50.00	100.00	100.00	200.00	300.00	1,100.00	Small
Washington	No organization tax.									25.00
Wisconsin	25.00	25.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,0000.00	Small
Wyoming	10.00	10.00	15.00	20.00	25.00	45.00	105.00	205.00	1,005.00	Small (Publish notice)

*This is an annual tax on domestic corporations.

†Investigate annual license tax.

‡Investigate income tax.

‡‡There are also provisions in the Vermont law for fees for incorporation by special act of the General Assembly.

TABLE OF ANNUAL EXISTENCE FRANCHISE TAXES IMPOSED ON DOMESTIC CORPORATIONS BY THE STATES HAVING LIBERAL CORPORATION LAWS*

(In some instances these taxes apply to authorized capital stock, sometimes to issued and outstanding stock.)

(These taxes apply to all domestic corporations of these states except in the case of West Virginia and Delaware, where separate taxes apply to resident and non-resident domestic corporations.)

	$2,000	$5,000	$10,000	$25,000	$50,000	$100,000	$150,000	$200,000	$250,000	$500,000	$1,000,000	$5,000,000
**Delaware........	$5.00	$5.00	$5.00	$5.00	$10.00	$10.00	$20.00	$20.00	$20.00	$25.00	$50.00	$150.00
‡Maine...........	5.00	5.00	5.00	5.00	5.00	10.00	10.00	10.00	50.00	50.00	75.00	275.00
***Massachusetts....	2.00	5.00	10.00	25.00	50.00	100.00	150.00	200.00	250.00	500.00	1,000.00	5,000.00
**New Jersey......	2.00	5.00	10.00	25.00	50.00	100.00	150.00	200.00	250.00	500.00	1,000.00	4,000.00
†New York.......	3.00	7.50	15.00	37.50	75.00	150.00	225.00	300.00	375.00	750.00	1,500.00	7,500.00
West Va... R.	10.00	10.00	15.00	20.00	25.00	50.00	60.00	75.00	90.00	120.00	170.00	410.00
N. R.	15.00	15.00	15.00	20.00	30.00	50.00	62.50	75.00	87.50	150.00	275.00	725.00
Virginia.........	10.00	10.00	10.00	10.00	20.00	40.00	60.00	60.00	60.00	100.00	200.00	600.00

*Arizona, Connecticut, the District of Columbia, Nevada and South Dakota impose no annual existence franchise tax. Arizona, however, has an annual registration fee of $15.00 for all corporations, domestic and foreign. Virginia also has a registration fee for foreign corporations, but proportioned to their capital stock.

†New York has an income franchise tax. The above is computed on the basis of a 6 per cent. dividend on the various amounts of capital, all of which capital is employed in New York. On the proportion of capital represented in the state, a domestic or foreign corporation is required to pay 1½ mills of tax on each dollar of the valuation of the capital stock if the dividends are less than 6 per cent.; if dividends are more, the amount of dividends made and declared is taxed ¼ of a mill for each one per cent.

**No annual license fee or tax on foreign corporations.

‡Annual license fee of $10.00 for foreign corporations.

***This is not exact as a fixed tax, but only relative. See the law.

TABLE OF CORPORATE EXISTENCE REPORTS, MEETINGS AND SUBSCRIPTION PAYMENTS

Applicable to Corporations Organized Under States Having Liberal Laws

STATES	Duration of Corporate Existence	Reports	Meeting of Stockholders	Meeting of Directors	How Stock May be Paid
*Arizona	25 Years	Not Required	In State	May be out of Territory	Money, Property, Services
Connecticut	Perpetual or Limited	Not Exacting, but Penalty	In State, Except First	May be out of State	Money, Property
Delaware	†Perpetual	Not Exacting	As By-Laws Provide	May be out of State	Money, Property, Services
Maine	Perpetual	Not Exacting	In State	May be out of State	Money, Property, Services
Massachusetts	Perpetual	Exacting and Penalty	In State	May be out of State	Money, Property, Services, Expenses
Nevada	Perpetual	Not Exacting	As By-Laws Provide	May be out of State	Money, Property, Services
New Jersey	Perpetual	Not Exacting	In State	May be out of State	Money, Property, Stocks
†New York	Perpetual	Exacting on Request	In State	May be out of State	Money, Property, Services
South Dakota	25 Years	Not Mandatory, but Directory	Anywhere	May be out of State	Money, Property, Services
Virginia	Perpetual	Not Exacting	In State	May be out of State	Money, Property, Services
†West Virginia	50 Years	Not Exacting, but Penalty	As By-Laws Provide	As By-Laws Provide	Money, Property, Services
District of Columbia	Perpetual	Published Annually; Exacting	In District	In District	Money, Property

*Arizona alone requires publication of charter.

†In most states, where corporations are given a perpetual franchise, they are also permitted a limited franchise if the articles so state.

INCOME-YIELDING CAPACITY OF STOCKS

Purchase Price	Dividend Rate Per Annum.										
	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	12%
10	10.00	20.00	30.00	40.00	50.00	60.00	70.00	80.00	90.00	100.00	120.00
12½	8.00	16.00	24.00	32.00	40.00	48.00	56.00	64.00	72.00	80.00	96.00
15	6.67	13.33	20.00	26.67	33.33	40.00	46.67	53.33	60.00	66.67	80.00
17½	5.71	11.43	17.14	22.86	28.57	34.28	40.00	45.71	51.43	57.14	68.57
20	5.00	10.00	15.00	20.00	25.00	30.00	35.00	40.00	45.00	50.00	60.00
22½	4.44	8.89	13.33	17.78	22.22	26.67	31.11	35.56	40.00	44.44	53.33
25	4.00	8.00	12.00	16.00	20.00	24.00	28.00	32.00	36.00	40.00	48.00
27½	3.64	7.27	10.91	14.55	18.18	21.82	25.45	29.09	32.73	36.36	43.64
30	3.33	6.67	10.00	13.33	16.67	20.00	23.33	26.67	30.00	33.33	40.00
32½	3.08	6.15	9.23	12.31	15.39	18.46	21.54	24.62	27.69	30.77	36.92
35	2.86	5.71	8.57	11.43	14.29	17.14	20.00	22.86	25.71	28.57	34.29
37½	2.67	5.33	8.00	10.67	13.33	16.00	18.67	21.33	24.00	26.67	32.00
40	2.50	5.00	7.50	10.00	12.50	15.00	17.50	20.00	22.50	25.00	30.00
42½	2.35	4.70	7.06	9.41	11.76	14.12	16.47	18.82	21.18	23.53	28.23
45	2.22	4.44	6.67	8.89	11.11	13.33	15.56	17.78	20.00	22.22	26.67
47½	2.11	4.21	6.32	8.42	10.53	12.63	14.74	16.84	18.95	21.05	25.26
50	2.00	4.00	6.00	8.00	10.00	12.00	14.00	16.00	18.00	20.00	24.00
52½	1.90	3.81	5.71	7.62	9.52	11.43	13.33	15.24	17.14	19.05	22.86
55	1.82	3.63	5.45	7.27	9.09	10.91	12.72	14.55	16.36	18.18	21.82
57½	1.74	3.48	5.22	6.96	8.70	10.43	12.17	13.91	15.65	17.39	20.87
60	1.67	3.33	5.00	6.67	8.33	10.00	11.67	13.33	15.00	16.67	20.00
62½	1.60	3.20	4.80	6.40	8.00	9.60	11.20	12.80	14.40	16.00	19.20
65	1.54	3.08	4.62	6.15	7.69	9.23	10.77	12.31	13.85	15.38	18.46
67½	1.48	2.96	4.44	5.93	7.41	8.89	10.37	11.85	13.33	14.81	17.78
70	1.43	2.86	4.29	5.71	7.14	8.57	10.00	11.43	12.86	14.29	17.14
72½	1.38	2.76	4.14	5.52	6.90	8.27	9.65	11.03	12.41	13.79	16.55
75	1.33	2.67	4.00	5.33	6.67	8.00	9.33	10.67	12.00	13.33	16.00
77½	1.29	2.58	3.87	5.16	6.45	7.74	9.03	10.32	11.61	12.90	15.48
80	1.25	2.50	3.75	5.00	6.25	7.50	8.75	10.00	11.25	12.50	15.00
82½	1.21	2.42	3.64	4.85	6.06	7.27	8.48	9.70	10.91	12.12	14.54
85	1.18	2.35	3.53	4.71	5.88	7.06	8.24	9.41	10.59	11.76	14.12
87½	1.14	2.29	3.43	4.57	5.71	6.86	8.00	9.14	10.29	11.43	13.71
90	1.11	2.22	3.33	4.44	5.56	6.67	7.78	8.89	10.00	11.11	13.33
92½	1.08	2.16	3.24	4.32	5.41	6.49	7.57	8.65	9.73	10.81	12.97
95	1.05	2.11	3.16	4.21	5.26	6.32	7.37	8.42	9.47	10.53	12.63
97½	1.03	2.05	3.08	4.10	5.13	6.15	7.18	8.21	9.23	10.26	12.31
100	1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	12.00
105	.95	1.90	2.86	3.81	4.76	5.71	6.67	7.62	8.57	9.52	11.43
110	.91	1.82	2.73	3.64	4.55	5.45	6.36	7.27	8.18	9.09	10.91
115	.87	1.74	2.61	3.48	4.35	5.22	6.09	6.96	7.83	8.70	10.43
120	.83	1.67	2.50	3.33	4.17	5.00	5.83	6.67	7.50	8.33	10.00
125	.80	1.60	2.40	3.20	4.00	4.80	5.60	6.40	7.20	8.00	9.60
130	.77	1.54	2.31	3.08	3.85	4.62	5.38	6.15	6.92	7.69	9.23
135	.74	1.48	2.22	2.96	3.70	4.44	5.19	5.93	6.67	7.41	8.89
140	.71	1.43	2.14	2.86	3.57	4.29	5.00	5.71	6.43	7.14	8.57
145	.69	1.38	2.07	2.76	3.45	4.14	4.83	5.52	6.21	6.90	8.28
150	.67	1.33	2.00	2.67	3.33	4.00	4.67	5.33	6.00	6.67	8.00
155	.65	1.29	1.94	2.58	3.23	3.87	4.52	5.16	5.81	6.45	7.74
160	.63	1.25	1.87	2.50	3.12	3.75	4.37	5.00	5.62	6.25	7.50
165	.61	1.21	1.82	2.42	3.03	3.64	4.24	4.85	5.45	6.06	7.27
170	.59	1.18	1.76	2.35	2.94	3.53	4.12	4.71	5.29	5.88	7.06
175	.57	1.14	1.71	2.29	2.86	3.43	4.00	4.57	5.14	5.71	6.85
180	.56	1.11	1.67	2.22	2.78	3.33	3.89	4.44	5.00	5.56	6.67
185	.54	1.08	1.62	2.16	2.70	3.24	3.78	4.32	4.86	5.41	6.49
190	.53	1.05	1.58	2.11	2.63	3.16	3.68	4.21	4.74	5.26	6.32
195	.51	1.03	1.54	2.05	2.56	3.08	3.59	4.10	4.62	5.13	6.15
200	.50	1.00	1.50	2.00	2.50	3.00	3.50	4.00	4.50	5.00	6.00

KEY—A six per cent. stock which sells at 85 yields 7.06 per cent. Look down the 6 per cent. column till opposite 85.

INTEREST-YIELDING CAPACITY OF BONDS

Showing the price at which a **three** per cent. bond must be bought to realize from 2 to 6 per cent. per annum.
Interest payable semi-annually.

Years to Run	2	2¼	2½	2¾	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	6
1.....	100.99	100.74	100.49	100.24	100.00	99.76	99.51	99.27	99.03	98.79	98.55	98.31	98.07	97.84	97.60	97.13
2.....	101.95	101.46	100.97	100.48	100.00	99.52	99.04	98.57	98.10	97.63	97.16	96.70	96.24	95.78	95.33	94.42
3.....	102.90	102.16	101.44	100.72	100.00	99.29	98.59	97.89	97.20	96.51	95.83	95.16	94.49	93.83	93.17	91.87
4.....	103.83	102.85	101.89	100.94	100.00	99.07	98.15	97.24	96.34	95.45	94.56	93.69	92.83	91.98	91.13	89.47
5.....	104.74	103.53	102.34	101.16	100.00	98.85	97.72	96.61	95.51	94.42	93.35	92.29	91.25	90.22	89.20	87.20
6.....	105.63	104.19	102.77	101.37	100.00	98.65	97.32	96.00	94.71	93.44	92.19	90.96	89.74	88.55	87.37	85.07
7.....	106.50	104.83	103.19	101.58	100.00	98.45	96.92	95.42	93.95	92.50	91.08	89.68	88.31	86.96	85.64	83.06
8.....	107.36	105.46	103.61	101.78	100.00	98.25	96.54	94.86	93.21	91.60	90.02	88.46	86.95	85.45	83.99	81.16
9.....	108.20	106.08	104.01	101.98	100.00	98.06	96.17	94.32	92.50	90.73	89.00	87.30	85.65	84.03	82.44	79.37
10.....	109.02	106.68	104.40	102.17	100.00	97.88	95.81	93.79	91.82	89.90	88.03	86.20	84.41	82.67	80.97	77.68
11.....	109.83	107.27	104.78	102.36	100.00	97.70	95.47	93.29	91.17	89.11	87.10	85.14	83.23	81.38	79.57	76.09
12.....	110.62	107.85	105.16	102.54	100.00	97.53	95.13	92.81	90.54	88.34	86.21	84.13	82.12	80.15	78.25	74.60
13.....	111.40	108.41	105.52	102.72	100.00	97.37	94.81	92.34	89.94	87.61	85.36	83.17	81.05	78.99	77.00	73.18
14.....	112.16	108.96	105.88	102.89	100.00	97.21	94.50	91.89	89.36	86.91	84.54	82.25	80.04	77.89	75.81	71.85
15.....	112.90	109.50	106.22	103.06	100.00	97.05	94.20	91.46	88.80	86.24	83.77	81.38	79.07	76.84	74.69	70.60
20.....	116.42	112.03	107.83	103.83	100.00	96.34	92.85	89.51	86.32	83.27	80.35	77.57	74.90	72.34	69.90	65.33
25.....	119.60	114.28	109.25	104.50	100.00	95.74	91.71	87.90	84.29	80.87	77.62	74.55	71.64	68.87	66.25	61.41
30.....	122.48	116.30	110.51	105.08	100.00	95.23	90.76	86.56	82.62	78.92	75.44	72.17	69.09	66.20	63.47	58.49
35.....	125.08	118.10	111.62	105.60	100.00	94.80	89.96	85.45	81.25	77.34	73.69	70.28	67.10	64.13	61.35	56.31
40.....	127.44	119.71	112.60	106.04	100.00	94.43	89.28	84.53	80.13	76.06	72.29	68.79	65.55	62.54	59.73	54.70
45.....	129.58	121.15	113.46	106.43	100.00	94.11	88.71	83.76	79.21	75.02	71.17	67.61	64.33	61.30	58.50	53.50
50.....	131.51	122.44	114.23	106.77	100.00	93.84	88.23	83.12	78.45	74.18	70.27	66.68	63.39	60.35	57.56	52.60
60.....	134.85	124.63	115.49	107.33	100.00	93.42	87.50	82.16	77.32	72.95	68.98	65.36	62.07	59.06	56.30	51.44
70.....	137.58	126.37	116.49	107.75	100.00	93.11	86.97	81.49	76.56	72.11	68.15	64.54	61.26	58.28	55.56	50.80
80.....	139.82	127.77	117.26	108.07	100.00	92.89	86.60	81.02	76.05	71.61	67.62	64.02	60.77	57.82	55.14	50.44
90.....	141.66	128.88	117.86	108.31	100.00	92.73	86.34	80.71	75.71	71.26	67.27	63.70	60.47	57.55	54.89	50.24
100.....	143.16	129.78	118.33	108.50	100.00	92.61	86.16	80.49	75.48	71.03	67.06	63.49	60.29	57.38	54.75	50.14

NOTE The tables entitled The Income-Yielding Capacity of Stocks and The Interest-Yielding Capacity of Bonds are copyrighted by The Manual of Statistics Co., New York, by whose permission they are used here.

INTEREST-YIELDING CAPACITY OF BONDS

Showing the price at which a **three and one-half** per cent. bond must be bought to realize from 2 to 6 per cent. per annum. Interest payable semi-annually.

YEARS TO RUN	2	2¼	2½	2¾	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	6
1.....	101.48	101.23	100.98	100.73	100.49	100.24	100.00	99.76	99.51	99.27	99.03	98.79	98.55	98.32	98.08	97.61
2.....	102.93	102.43	101.94	101.45	100.96	100.48	100.00	99.52	99.05	98.58	98.11	97.64	97.18	96.72	96.26	95.35
3.....	104.35	103.61	102.87	102.15	101.42	100.71	100.00	90.30	98.60	97.91	97.22	96.54	95.87	95.20	94.54	93.23
4.....	105.74	104.76	103.78	102.82	101.87	100.93	100.00	99.08	98.17	97.27	96.38	95.49	94.62	93.76	92.91	91.23
5.....	107.10	105.88	104.67	103.48	102.31	101.15	100.00	98.87	97.75	96.65	95.57	94.49	93.44	92.39	91.36	89.34
6.....	108.44	106.98	105.54	104.12	102.73	101.35	100.00	98.67	97.36	96.06	94.79	93.54	92.31	91.09	89.90	87.56
7.....	109.75	108.05	106.39	104.75	103.14	101.55	100.00	98.47	96.97	95.50	94.05	92.63	91.23	89.86	88.51	85.88
8.....	111.04	109.10	107.21	105.35	103.53	101.75	100.00	98.29	96.61	94.96	93.34	91.76	90.21	88.69	87.20	84.30
9.....	112.30	110.13	108.01	105.94	103.92	101.94	100.00	98.11	96.25	94.44	92.67	90.93	89.23	87.58	85.95	82.81
10.....	113.53	111.14	108.80	106.52	104.29	102.12	100.00	97.93	95.91	93.94	92.02	90.14	88.31	86.52	84.77	81.40
11.....	114.75	112.12	109.57	107.08	104.66	102.30	100.00	97.76	95.59	93.46	91.40	89.39	87.43	85.52	83.66	80.08
12.....	115.93	113.08	110.31	107.62	105.01	102.47	100.00	97.60	95.27	93.01	90.81	88.67	86.59	84.56	82.60	78.83
13.....	117.10	114.02	111.04	108.15	105.35	102.63	100.00	97.45	94.97	92.57	90.24	87.98	85.79	83.66	81.60	77.65
14.....	118.24	114.94	111.75	108.67	105.68	102.79	100.00	97.30	94.68	92.15	89.70	87.32	85.03	82.80	80.65	76.54
15.....	119.36	115.84	112.44	109.17	106.00	102.95	100.00	97.15	94.40	91.74	89.18	86.70	84.30	81.99	79.75	75.50
20.....	124.63	120.04	115.66	111.48	107.48	103.66	100.00	96.50	93.16	89.96	86.90	83.98	81.17	78.49	75.92	71.11
25.....	129.40	123.80	118.51	113.49	108.75	104.26	100.00	95.97	92.14	88.52	85.08	81.82	78.73	75.79	73.00	67.84
30.....	133.72	127.16	121.02	115.25	109.85	104.77	100.00	95.52	91.31	87.35	83.63	80.12	76.82	73.71	70.78	65.41
35.....	137.62	130.17	123.23	116.79	110.79	105.20	100.00	95.15	90.63	86.40	82.46	78.77	75.33	72.10	69.08	63.60
40.....	141.16	132.85	125.19	118.13	111.60	105.57	100.00	94.84	90.06	85.63	81.53	77.71	74.16	70.86	67.79	62.25
45.....	144.36	135.26	126.92	119.29	112.30	105.89	100.00	94.59	89.60	85.01	80.78	76.87	73.25	69.90	66.80	61.25
50.....	147.26	137.41	128.45	120.31	112.91	106.16	100.00	94.37	89.23	84.51	80.18	76.20	72.54	69.16	66.05	60.50
60.....	152.27	141.04	130.98	121.98	113.88	106.58	100.00	94.05	88.66	83.77	79.32	75.26	71.55	68.15	65.04	59.53
70.....	156.37	143.95	132.97	123.24	114.60	106.88	100.00	93.83	88.28	83.28	78.77	74.67	70.95	67.55	64.45	59.00
80.....	159.73	146.28	134.52	124.20	115.13	107.11	100.00	93.67	88.03	82.96	78.41	74.30	70.58	67.19	64.11	58.70
90.....	162.48	148.14	135.73	124.94	115.53	107.27	100.00	93.57	87.85	82.75	78.18	74.07	70.35	66.98	63.91	58.54
100.....	164.74	149.63	136.67	125.49	115.82	107.38	100.00	93.50	87.74	82.62	78.04	73.92	70.22	66.85	63.80	58.45

INTEREST-YIELDING CAPACITY OF BONDS

Showing the price at which a **four** per cent. bond must be bought to realize from 2 to 6 per cent. per annum.
Interest payable semi-annually.

Years to Run.	2	2¼	2½	2¾	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	6
1.....	101.97	101.72	101.47	101.22	100.98	100.73	100.49	100.24	100.00	99.76	99.52	99.28	99.04	98.80	98.56	98.09
2.....	103.90	103.40	102.91	102.42	101.93	101.44	100.96	100.48	100.00	99.53	99.05	98.59	98.12	97.66	97.20	96.28
3.....	105.80	105.05	104.31	103.58	102.85	102.13	101.41	100.70	100.00	99.30	98.61	97.93	97.25	96.57	95.00	94.58
4.....	107.65	106.66	105.68	104.70	103.74	102.79	101.85	100.92	100.00	99.09	98.19	97.30	96.41	95.54	94.68	92.98
5.....	109.47	108.23	107.01	105.80	104.61	103.44	102.28	101.13	100.00	98.88	97.78	96.70	95.62	94.57	93.52	91.47
6.....	111.26	109.77	108.31	106.87	105.45	104.06	102.68	101.33	100.00	98.69	97.40	96.12	94.87	93.64	92.42	90.05
7.....	113.00	111.28	109.58	107.91	106.27	104.66	103.08	101.53	100.00	98.50	97.03	95.58	94.15	92.76	91.38	88.70
8.....	114.72	112.75	110.82	108.92	107.07	105.25	103.46	101.71	100.00	98.32	96.67	95.06	93.47	91.92	90.40	87.44
9.....	116.40	114.19	112.02	109.91	107.84	105.81	103.82	101.89	100.00	98.15	96.33	94.56	92.82	91.13	89.46	86.25
10.....	118.05	115.59	113.20	110.86	108.58	106.36	104.19	102.07	100.00	97.98	96.01	94.08	92.21	90.37	88.58	85.12
11.....	119.66	116.97	114.35	111.80	109.31	106.89	104.53	102.24	100.00	97.82	95.70	93.63	91.62	89.65	87.74	84.06
12.....	121.24	118.31	115.47	112.70	110.02	107.40	104.87	102.40	100.00	97.67	95.40	93.20	91.06	88.97	86.95	83.06
13.....	122.80	119.63	116.56	113.59	110.70	107.90	105.19	102.55	100.00	97.52	95.12	92.79	90.52	88.33	86.20	82.12
14.....	124.32	120.92	117.63	114.44	111.36	108.38	105.50	102.70	100.00	97.38	94.85	92.39	90.02	87.72	85.49	81.24
15.....	125.81	122.17	118.67	115.28	112.01	108.85	105.80	102.85	100.00	97.25	94.59	92.02	89.53	87.13	84.81	80.40
20.....	132.83	128.06	123.50	119.13	114.96	110.97	107.15	103.50	100.00	96.65	93.45	90.39	87.45	84.64	81.94	76.89
25.....	139.20	133.32	127.76	122.49	117.50	112.77	108.29	104.03	100.00	96.17	92.54	89.09	85.82	82.71	79.75	74.27
30.....	144.96	138.03	131.53	125.42	119.69	114.30	109.24	104.48	100.00	95.78	91.81	88.07	84.55	81.22	78.08	72.32
35.....	150.16	142.23	134.85	127.98	121.53	115.61	110.04	104.85	100.00	95.47	91.23	87.26	83.55	80.07	76.81	70.88
40.....	154.88	146.00	137.79	130.24	123.20	116.72	110.72	105.16	100.00	95.21	90.76	86.63	82.77	79.19	75.84	69.80
45.....	159.15	149.36	140.38	132.16	124.69	117.67	111.29	105.41	100.00	95.00	90.39	86.12	82.17	78.50	75.10	69.00
50.....	163.02	152.37	142.68	133.85	125.81	118.47	111.77	105.63	100.00	94.84	90.09	85.72	81.69	77.97	74.54	68.40
60.....	169.69	157.46	146.48	136.61	127.75	119.74	112.50	105.95	100.00	94.59	89.66	85.15	81.03	77.25	73.78	67.63
70.....	175.16	161.53	149.46	138.73	129.15	120.65	113.02	106.17	100.00	94.43	89.36	84.80	80.63	76.82	73.34	67.20
80.....	179.64	164.79	151.78	140.34	130.26	121.32	113.39	106.33	100.00	94.32	89.21	84.58	80.39	76.57	73.08	66.96
90.....	183.31	167.39	153.59	141.56	131.05	121.80	113.65	106.43	100.00	94.25	89.09	84.44	80.24	76.41	72.94	66.83
100.....	186.33	169.48	154.99	142.49	131.64	122.45	113.83	106.51	100.00	94.21	89.02	84.35	80.14	76.32	72.85	66.76

INTEREST-YIELDING CAPACITY OF BONDS

Showing the price at which a **four and one-half** per cent. bond must be bought to realize from 2 to 6 per cent. per annum.
Interest payable semi-annually.

Years to Run.	2	2½	2¾	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	5¾	6
1.....	102.46	101.96	101.71	101.47	101.22	100.97	100.73	100.49	100.24	100.00	99.76	99.52	99.28	99.04	98.80	98.56
2.....	104.88	103.88	103.38	102.89	102.40	101.92	101.43	100.95	100.47	100.00	99.53	99.06	98.59	98.13	97.67	97.21
3.....	107.24	105.75	105.01	104.27	103.55	102.82	102.11	101.40	100.70	100.00	99.31	98.62	97.94	97.27	96.60	95.94
4.....	109.56	107.57	106.59	105.61	104.65	103.70	102.76	101.83	100.91	100.00	99.10	98.21	97.33	96.45	95.59	94.74
5.....	111.84	109.35	108.12	106.92	105.73	104.55	103.39	102.25	101.12	100.00	98.90	97.81	96.74	95.68	94.63	93.60
6.....	114.07	111.08	109.62	108.18	106.76	105.37	104.00	102.64	101.31	100.00	98.71	97.44	96.18	94.95	93.73	92.53
7.....	116.25	112.77	111.07	109.41	107.77	106.16	104.58	103.03	101.50	100.00	98.53	97.08	95.65	94.25	92.88	91.53
8.....	118.40	114.42	112.49	110.60	108.74	106.93	105.14	103.39	101.68	106.00	98.35	96.74	95.15	93.60	92.07	90.58
9.....	120.50	116.03	113.87	111.75	109.69	107.66	105.68	103.75	101.85	100.00	98.19	96.41	94.68	92.98	91.31	89.68
10.....	122.56	117.60	115.21	112.88	110.60	108.38	106.21	104.09	102.02	100.00	98.03	96.10	94.22	92.39	90.59	88.84
11.....	124.58	119.13	116.51	113.97	111.48	109.07	106.71	104.41	102.18	100.00	97.88	95.81	93.79	91.83	89.91	88.05
12.....	126.55	120.62	117.78	115.02	112.34	109.73	107.19	104.73	102.33	100.00	97.73	95.53	93.38	91.30	89.27	87.30
13.....	128.49	122.08	119.02	116.05	113.17	110.37	107.66	105.03	102.48	100.00	97.60	95.26	93.00	90.80	88.66	86.59
14.....	130.40	123.50	120.22	117.05	113.97	110.99	108.11	105.32	102.62	100.00	97.46	95.01	92.63	90.32	88.09	85.93
15.....	132.26	124.89	121.39	118.01	114.75	111.59	108.54	105.60	102.75	100.00	97.34	94.77	92.28	89.88	87.55	85.30
20.....	141.04	131.33	126.78	122.44	118.28	114.30	110.49	106.84	103.35	100.00	96.80	93.72	90.78	87.96	85.26	82.66
25.....	149.00	137.01	131.49	126.25	121.28	116.57	112.10	107.86	103.83	100.00	96.36	92.91	89.62	86.50	83.53	80.70
30.....	156.19	142.03	135.59	129.54	123.84	118.48	113.44	108.69	104.22	100.00	96.02	92.27	88.73	85.39	82.23	79.24
35.....	162.70	146.47	139.17	132.37	126.02	120.09	114.55	109.37	104.53	100.00	95.75	91.78	88.04	84.54	81.25	78.16
40.....	168.60	150.39	142.29	134.81	127.87	121.44	115.47	109.94	104.79	100.00	95.54	91.39	87.51	83.89	80.51	77.35
45.....	173.94	153.85	145.02	136.91	129.45	122.58	116.24	110.40	105.00	100.00	95.37	91.08	87.10	83.40	79.96	76.75
50.....	178.79	156.90	147.40	138.72	130.79	123.53	116.88	110.77	105.16	100.00	95.24	90.85	86.78	83.02	79.54	76.30
60.....	187.12	161.98	151.28	141.63	132.89	125.00	117.84	111.34	105.41	100.00	95.05	90.52	86.35	82.52	78.99	75.72
70.....	193.95	165.95	154.23	143.79	134.42	126.05	118.51	111.72	105.57	100.00	94.93	90.32	86.09	82.23	78.67	75.40
80.....	199.55	169.04	156.48	145.39	135.53	126.79	118.98	111.97	105.68	100.00	94.86	90.19	85.94	82.06	78.49	75.22
90.....	204.14	171.45	158.19	146.58	136.35	127.31	119.29	112.15	105.75	100.00	94.81	90.12	85.85	81.96	78.39	75.12
100.....	207.90	173.33	159.50	147.46	136.92	127.68	119.51	112.26	105.79	100.00	94.78	90.07	85.79	81.90	78.34	75.07

INTEREST-YIELDING CAPACITY OF BONDS

Showing the price at which a **five** per cent. bond must be bought to realize from 3 to 7 per cent. per annum.
Interest payable semi-annually.

YEARS TO RUN.	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	5¾	6	6¼	6½	7
1.....	101.96	101.71	101.46	101.22	100.97	100.73	100.48	100.24	100.00	99.76	99.52	99.28	99.04	98.81	98.57	98.10
2.....	103.85	103.36	102.87	102.39	101.90	101.42	100.95	100.47	100.00	99.53	99.07	98.60	98.14	97.68	97.23	96.33
3.....	105.70	104.96	104.24	103.52	102.80	102.09	101.39	100.69	100.00	99.31	98.63	97.96	97.29	96.63	95.97	94.67
4.....	107.49	106.51	105.55	104.60	103.66	102.73	101.81	100.90	100.00	99.11	98.23	97.35	96.49	95.64	94.79	93.13
5.....	109.22	108.02	106.83	105.65	104.49	103.35	102.22	101.10	100.00	98.91	97.84	96.78	95.73	94.70	93.68	91.68
6.....	110.91	109.47	108.05	106.66	105.29	103.94	102.60	101.29	100.00	98.73	97.17	96.24	95.02	93.82	92.64	90.34
7.....	112.54	110.88	109.24	107.63	106.05	104.50	102.97	101.47	100.00	98.55	97.13	95.73	94.35	93.00	91.67	89.08
8.....	114.13	112.24	110.39	108.57	106.79	105.04	103.33	101.65	100.00	98.38	96.80	95.24	93.72	92.22	90.76	87.91
9.....	115.67	113.56	111.50	109.47	107.50	105.56	103.67	101.81	100.00	98.23	96.49	94.79	93.12	91.49	89.90	86.81
10.....	117.17	114.84	112.56	110.34	108.18	106.06	103.99	101.97	100.00	98.07	96.19	94.36	92.56	90.81	89.10	85.79
11.....	118.62	116.08	113.60	111.18	108.83	106.54	104.30	102.12	100.00	97.93	95.91	93.95	92.03	90.16	88.34	84.83
12.....	120.03	117.27	114.60	111.99	109.46	106.99	104.60	102.27	100.00	97.79	95.65	93.56	91.53	89.56	87.63	83.94
13.....	121.40	118.43	115.56	112.77	110.06	107.43	104.88	102.40	100.00	97.67	95.40	93.20	91.06	88.99	86.97	83.11
14.....	122.73	119.56	116.49	113.52	110.64	107.85	105.15	102.54	100.00	97.54	95.16	92.85	90.62	88.45	86.13	82.33
15.....	124.02	120.65	117.39	114.24	111.20	108.26	105.41	102.66	100.00	97.43	94.94	92.53	90.20	87.95	85.76	81.61
20.....	129.92	125.59	121.45	117.48	113.68	110.04	106.55	103.20	100.00	96.93	93.98	91.15	88.44	85.84	83.34	78.64
25.....	135.00	129.80	124.86	120.17	115.71	111.48	107.46	103.64	100.00	96.54	93.25	90.12	87.14	84.29	81.59	76.54
30.....	139.38	133.38	127.72	122.40	117.38	112.65	108.19	103.98	100.00	96.24	92.69	89.34	86.16	83.16	80.31	75.06
35.....	143.15	136.42	130.13	124.25	118.75	113.60	108.77	104.25	100.00	96.01	92.27	88.75	85.44	82.32	79.38	74.00
40.....	146.41	139.02	132.16	125.79	119.87	114.37	109.24	104.46	100.00	95.84	91.95	88.31	84.90	81.71	78.71	73.25
45.....	149.21	141.22	133.86	127.07	120.79	114.99	109.61	104.63	100.00	95.70	91.70	87.97	84.50	81.25	78.22	72.72
50.....	151.62	143.10	135.30	128.13	121.55	115.49	109.91	104.76	100.00	95.59	91.51	87.72	84.20	80.92	77.87	72.34
60.....	155.50	146.07	137.51	129.75	122.68	116.23	110.34	104.95	100.00	95.45	91.26	87.39	83.81	80.50	77.42	71.89
70.....	158.37	148.21	139.08	130.85	123.44	116.72	110.62	105.07	100.00	95.36	91.11	87.20	83.60	80.27	77.19	71.66
80.....	160.51	149.76	140.19	131.62	123.95	117.04	110.80	105.14	100.00	95.31	91.03	87.10	83.48	80.15	77.06	71.54
90.....	162.10	150.89	140.97	132.15	124.29	117.25	110.91	105.19	100.00	95.28	90.98	87.04	83.41	80.08	77.00	71.49
100.....	163.27	151.71	141.52	132.52	124.52	117.38	110.98	105.22	100.00	95.26	90.95	87.00	83.38	80.04	76.96	71.46

INTEREST-YIELDING CAPACITY OF BONDS

Showing the price at which a **six** per cent. bond must be bought to realize from 3 to 7 per cent. per annum.
Interest payable semi-annually.

Years to Run	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	5¾	6	6¼	6½	7
1	102.93	102.68	102.44	102.19	101.94	101.70	101.45	101.21	100.96	100.72	100.48	100.24	100.00	99.76	99.52	99.05
2	105.78	105.28	104.79	104.30	103.81	103.32	102.84	102.36	101.88	101.41	100.93	100.47	100.00	99.54	99.08	98.16
3	108.55	107.80	107.06	106.33	105.60	104.88	104.17	103.46	102.75	102.06	101.37	100.68	100.00	99.33	98.66	97.34
4	111.23	110.24	109.26	108.29	107.33	106.38	105.44	104.51	103.59	102.67	101.77	100.88	100.00	99.13	98.26	96.56
5	113.83	112.60	111.38	110.17	108.98	107.81	106.65	105.51	104.38	103.26	102.16	101.07	100.00	98.94	97.89	95.84
6	116.36	114.88	113.42	111.99	110.58	109.18	107.81	106.46	105.13	103.82	102.53	101.25	100.00	98.76	97.55	95.17
7	118.82	117.09	115.40	113.74	112.11	110.50	108.92	107.37	105.85	104.35	102.87	101.42	100.00	98.60	97.22	94.54
8	121.20	119.24	117.31	115.43	113.58	111.76	109.98	108.24	106.53	104.85	103.20	101.59	100.00	98.44	96.92	93.95
9	123.51	121.31	119.16	117.05	114.99	112.97	111.00	109.07	107.18	105.32	103.51	101.74	100.00	98.30	96.63	93.41
10	125.75	123.32	120.94	118.62	116.35	114.14	111.97	109.86	107.79	105.78	103.81	101.88	100.00	98.16	96.37	92.89
11	127.93	125.26	122.68	120.13	117.66	115.25	112.90	110.61	108.38	106.21	104.09	102.02	100.00	98.03	96.11	92.42
12	130.05	127.15	124.33	121.58	118.91	116.32	113.79	111.33	108.94	106.62	104.35	102.15	100.00	97.91	95.88	91.97
13	132.10	128.97	125.93	122.98	120.12	117.34	114.64	112.02	109.48	107.00	104.60	102.27	100.00	97.80	95.66	91.55
14	134.09	130.73	127.48	124.33	121.28	118.32	115.46	112.68	109.98	107.37	104.84	102.38	100.00	97.69	95.45	91.17
15	136.02	132.44	128.98	125.63	122.40	119.26	116.23	113.30	110.47	107.72	105.06	102.49	100.00	97.59	95.25	90.80
16	137.90	134.10	130.43	126.89	123.47	120.17	116.98	113.90	110.92	108.05	105.28	102.59	100.00	97.49	95.07	90.47
17	139.72	135.70	131.83	128.10	124.50	121.03	117.69	114.47	111.36	108.37	105.48	102.69	100.00	97.41	94.90	90.15
18	141.49	137.25	133.18	129.26	125.49	121.86	118.37	115.01	111.78	108.67	105.67	102.78	100.00	97.32	94.74	89.85
19	143.21	138.76	134.48	130.38	126.44	122.66	119.02	115.53	112.17	108.95	105.85	102.87	100.00	97.24	94.59	89.58
20	144.87	140.21	135.74	131.46	127.36	123.42	119.65	116.02	112.55	109.22	106.02	102.95	100.00	97.17	94.45	89.32
25	152.50	146.82	141.43	136.30	131.42	126.79	122.38	118.18	114.18	110.38	106.75	103.29	100.00	96.86	93.86	88.27
30	159.07	152.45	146.20	140.32	134.76	129.52	124.56	119.88	115.45	111.27	107.31	103.55	100.00	96.63	93.44	87.53
35	164.73	157.24	150.22	143.65	137.50	131.73	126.31	121.23	116.45	111.96	107.73	103.75	100.00	96.46	93.13	87.00
40	169.61	161.31	153.60	146.42	139.74	133.52	127.71	122.29	117.23	112.49	108.05	103.90	100.00	96.34	92.90	86.63
45	173.81	164.78	156.44	148.73	141.59	134.97	128.83	123.13	117.83	112.90	108.30	104.01	100.00	96.25	92.74	86.36
50	177.44	167.73	158.83	150.64	143.10	136.15	129.73	123.80	118.31	113.22	108.49	104.09	100.00	96.18	92.62	86.17

INTEREST-YIELDING CAPACITY OF BONDS

Showing the price at which a **seven** per cent. bond must be bought to realize from 3 to 7 per cent. per annum.
Interest payable semi-annually.

YEARS TO RUN.	3	3¼	3½	3¾	4	4¼	4½	4¾	5	5¼	5½	5¾	6	6¼	6½	7
1......	103.91	103.66	103.41	103.16	102.91	102.66	102.42	102.17	101.93	101.68	101.44	101.20	100.96	100.72	100.48	100.00
2......	107.71	107.20	106.70	106.21	105.71	105.22	104.73	104.25	103.76	103.28	102.80	102.33	101.86	101.39	100.92	100.00
3......	111.39	110.64	109.89	109.14	108.40	107.67	106.94	106.22	105.51	104.80	104.10	103.40	102.71	102.02	101.34	100.00
4......	114.97	113.96	112.96	111.97	110.99	110.02	109.06	108.11	107.17	106.24	105.32	104.41	103.51	102.62	101.74	100.00
5......	118.44	117.18	115.93	114.69	113.47	112.27	111.08	109.91	108.75	107.61	106.48	105.37	104.27	103.18	102.11	100.00
6......	121.82	120.29	118.79	117.32	115.86	114.43	113.02	111.63	110.26	108.91	107.58	106.27	104.98	103.71	102.45	100.00
7......	125.09	123.31	121.56	119.85	118.16	116.50	114.87	113.27	111.69	110.14	108.62	107.12	105.65	104.20	102.78	100.00
8......	128.26	126.23	124.24	122.28	120.37	118.49	116.64	114.83	113.05	111.31	109.60	107.93	106.28	104.67	103.08	100.00
9......	131.35	129.06	126.82	124.63	122.49	120.39	118.33	116.32	114.35	112.42	110.54	108.69	106.88	105.10	103.37	100.00
10......	134.34	131.80	129.32	126.89	124.53	122.21	119.95	117.75	115.59	113.48	111.42	109.41	107.44	105.52	103.63	100.00
11......	137.24	134.45	131.73	129.07	126.49	123.96	121.50	119.11	116.77	114.48	112.26	110.09	107.97	105.90	103.89	100.00
12......	140.06	137.02	134.06	131.17	128.37	125.64	122.99	120.40	117.88	115.44	113.05	110.73	108.47	106.27	104.12	100.00
13......	142.80	139.50	136.31	133.20	130.18	127.25	124.40	121.64	118.95	116.34	113.80	111.34	108.94	106.61	104.34	100.00
14......	145.45	141.91	138.48	135.15	131.92	128.79	125.76	122.82	119.96	117.20	114.51	111.91	109.38	106.93	104.55	100.00
15......	148.03	144.24	140.58	137.03	133.59	130.27	127.06	123.94	120.93	118.01	115.19	112.45	109.80	107.23	104.75	100.00
16......	150.53	146.50	142.60	138.84	135.20	131.69	128.30	125.02	121.85	118.79	115.83	112.96	110.19	107.52	104.93	100.00
17......	152.96	148.68	144.56	140.58	136.75	133.05	129.48	126.04	122.72	119.52	116.43	113.45	110.57	107.78	105.10	100.00
18......	155.32	150.80	146.45	142.26	138.23	134.35	130.62	127.02	123.56	120.22	117.00	113.90	110.92	108.04	105.26	100.00
19......	157.61	152.85	148.28	143.88	139.66	135.60	131.70	127.95	124.35	120.88	117.54	114.34	111.25	108.27	105.41	100.00
20......	159.83	154.83	150.04	145.44	141.03	136.80	132.74	128.84	125.10	121.51	118.06	114.74	111.56	108.50	105.55	100.00
25......	170.00	163.85	158.00	152.43	147.14	142.09	137.29	132.72	128.36	124.21	120.25	116.47	112.86	109.42	106.14	100.00
30......	178.76	171.52	164.69	158.24	152.14	146.38	140.94	135.78	130.91	126.29	121.92	117.77	113.84	110.11	106.56	100.00
35......	186.31	178.05	170.31	163.06	156.25	149.86	143.85	138.21	132.90	127.90	123.19	118.75	114.56	110.61	106.87	100.00
40......	192.81	183.61	175.04	167.06	159.62	152.67	146.19	140.12	134.45	129.14	124.16	119.49	115.10	110.98	107.10	100.00
45......	198.42	188.34	179.02	170.38	162.38	154.95	148.06	141.64	135.67	130.10	124.90	120.04	115.50	111.25	107.26	100.00
50......	203.25	192.37	182.36	173.14	164.65	156.80	149.55	142.84	136.61	130.84	125.46	120.46	115.80	111.45	107.38	100.00

NOTE.—The formula used by Mr. Montgomery Rollins, of Boston, to give the market value of a bond paying interest semi-annually is as follows, *i* representing one-half of the interest at bond rate:

$$\frac{i}{r} - \left\{ \frac{\frac{i}{r} - 100}{(1 + r)^n} \right.$$

Another formula, prepared by Mr. William R. Blair, of Oshkosh, Wisconsin, is this:

Let *n* equal the number of interest payments the bond promises, *r* the real or market rate of interest, and *d* the difference between a single interest payment of the bond and the interest on its face value at market rate. This difference, recurring periodically, becomes an annuity of which the present worth is

$$\frac{d\left[(1 + r)^n - 1\right]}{(1 + r)^n r}$$

The numerical value of this quantity may be found by the use of logarithms, and is the premium of the bond when the bond rate exceeds the market rate, or the discount when the bond rate is less than the market rate. "Bond Values," published by Montgomery Rollins & Co., Boston, contains extensive tables showing the net return from bonds, stocks and other investments, at various maturities, interest or dividend returns, and prices.

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